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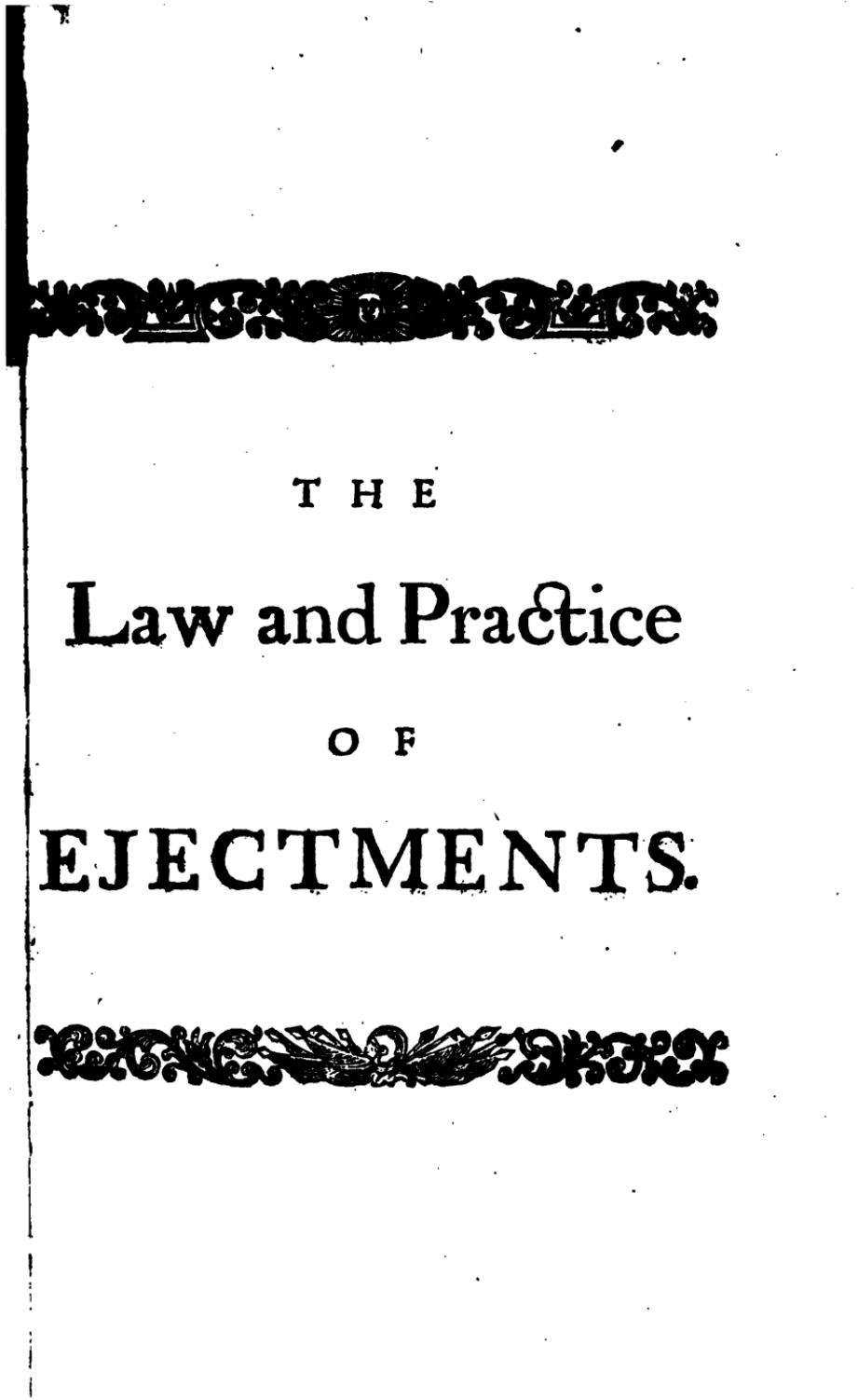
THE GIFT OF

W. H. Smith



I N
A G H
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I





THE
Law and Practice
OF
EJECTMENTS.



Just Publish'd,

MODERN ENTRIES, in English: Being a Select Collection of Pleadings in the Court of King's Bench, Common Pleas and Exchequer: viz. Declarations, Pleas in Abatement and in Bar, Replications, Rejoinders, &c. Demurrs, Issues, Verdicts, Judgments, Forms of Continuances, Discontinuances, and other Entries, and of Entering Judgments, &c. in all Personal Actions. And also all Kinds of Writs Original and Judicial. Translated from the most Authentick Books, but chiefly from LUTWICH's, SAUNDERS's, VENTRIS's, SALKELD's, and the Modern REPORTS; and from other Cases lately tried and adjudged, and wherein Writs of Error have been brought, and Judgments affirmed: Together with Readings and Observations on the several Cases in the REPORTS, as well relating to the Precedents herein, as to all other Cases incident to each particular Title; and the same abridg'd in a methodical Order. To which are added, References to all the other Entries in the Books. With three distinct Tables, One of the Precedents, the Second of the Cases abridg'd, and the Third of the Names of the Cases. By a Gentleman of the Inner Temple.

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MAZAIL, QATAR

Rob. Smith's

A

Compendious Treatise
ON
EJECTMENT.

AN *Ejectment* is an *Action* for the *Leesee* for Years, to recover a *Term* when he is ousted, and this is now generally made use of to recover the Possession of Lands; and therefore in this Action there are these things to be particularly observed.

First, The History of this Action.

Secondly, The Process.

Thirdly, The Declaration.

Fourthly, The Pleas, and General Issue.

Fifthly, The Verdict.

Sixthly, The Judgment and Execution.

B

First,

A Compendious Treatise

First, The History of this Action.

And here it is to be consider'd, That by the ancient common Law, Lands and Tenements were never recovered in any *personal Action*, but antiently the Writs of *Entry* and *Affize* were the usual Means for the Recovery of the *Possession*, and these lay only against the *Freeholder*, because the Estate for Years was heretofore only a precarious Possession, and therefore to have Actions against such Persons was to no Purpose, because such *Terms* were generally defeated or determined before any intricate Title could be decided, besides these Possessions being so precarious, the *Possessors* were not trusted with the Defence of the Interest of the Land, and if they were ousted they could only have recover'd Damages for the Loss of their *Possessions*, and if ousted by their *Lessors*, they could seek only a Remedy from their *Covenants*.

Thus the Law continued till the 14 H. 7. And then it began to be resolved that an *Habere Facias Possessionem* would lie to recover the *Term* itself.

It seems that the long *Terms* about this Time had their Beginning, and that since such *Lessees* could not by Law recover the Land itself, therefore they used to go into *Equity* against the *Lessors* for a *specifick Performance*; and against *Strangers*,

Strangers, to have *perpetual Injunctions* to quiet their Possessions; this drawing the Business into the Courts of *Equity*, obliged the Courts of *Law* to come to a Resolution, that they should recover the Land it self in an *Habere Facias Possessionem*.

But this Resolution brought on a new Method of *Trial* unknown before to the *Common Law*, for then it became usual for a Man that had a Right of *Entry* into any Lands to seal *Leases of Ejectment* on the Lands, and then any Person that next entred on the Freehold was an *Ejector*; and the Conveniency that arose from this Method was, they could try the Title *toties quoties*; whereas, if the Plaintiff was barred in an *Assize*, he was put to his *Writ of Right*; but this was a Means of turning any Man out of Possession, because such Plaintiff would recover his Term without any Notice to the *Tenant in Possession*, and therefore the Courts of Justice would not suffer that they should loose their Possessions without any Opportunity to defend them; wherefore the Court made it a standing Rule, that no Plaintiff should proceed in *Ejectment* to recover his Lands against such a *casual and titular Ejector*, without delivering the *Tenant in Possession* a Declaration, and making him an *Ejector* and proper Defendant if he pleased.

N.B. 489. This was a proper Rule of Court, and in its Power to form; for otherwise the Court would be made instrumental in doing an Injury to a third Person, because a Declaration might otherwise be delivered to a Stranger, a feint Defence be made, and a Verdict, Judgment, and Execution obtained without the Tenant's having any Notice of it: But it is not to be doubted, but that such Actions were brought at first against the real Ejectors that resided in the Possession: But because any Person that came into the Land *Animo possidendi*, was equally an Ejector with him that resided, the Action in Strictness of Law might be brought against him, but because this (as has been said) turned to the Injury of the residing Possessor, the Rule was made, that he should have Notice of it, and therefore they would not give Judgment in *Ejectment*, unless an Affidavit was made, that the Tenant in Possession was served with a Copy of the Declaration. But the ancient Practice was, that such Leafes were actually to be sealed and delivered, because otherwise the Plaintiff could maintain no Title to the Term, and were also obliged to be sealed on the Land it self, because it was Maintenance to convey out of Possession, and therefore in Relation to the Quickness of the Remedy; the *Affize* had the Advantage, because none

none of this Preparation was requir'd beforehand, for the Writ of *Affize* came down to the Assizes, and the *Jury* was there warned, the *Cause* try'd, and *Judgment* given, yet the Method in *Ejectment* from the Conveniency of the repeated Trials, notwithstanding the previous Preparations, was generally prefer'd.

Thus it stood till the Time of the Lord Chief Justice *Rolls*, and he invented the Rule now in Use; which is, that if the Defendant comes into the Room of the *casual Ejector*, he should enter into a Rule to confess *Lease*, *Entry*, and *Ouster*, and should stand upon the *Title* only. This Rule was reasonable, because, when the Plaintiff had made his *Lease* upon the *Land*, any third Person that came upon the *Land*, *animo possidendi*, in Strictness of Law, was an *Ejector*, therefore when any other *Ejector* was placed in his stead, it was very reasonable in the Court to impose Terms upon him, and therefore the proper Terms were, that he should not stand on the Proof of an *actual Entry*, *Demise*, and *actual Ouster*, because this was no more than a Form of bringing the *Title* in Question, it was not fit that the Plaintiff should be nonsuited for want of proving the formal *Demise* set forth in the *Declaration*, when the *casual Ejector* would have let the *Judgment* go by Default.

A Compendious Treatise

Secondly, Of the Writ or Process in this Action.

Every Ejectment did antiently begin with a *Pone* as in Trespass, the Ejectment indeed being but a Species of Trespass, for the Ousting of any Person of his Term, comes properly under that Denomination, and therefore the Original was a *Pone* in this Form :

*Rex vic Salutem si A. B. fecerit te se-
curum de clamore suo prosequendo tunc
pone per vadious & salvos plegios C. D.
nuperdo L. Gen. ita quod sit coram Just'
nostris apud Westm' (tali die) oftenurus
quare Vi & Armis Manerium de B.
quod prefat' T. dimisit A. ad terminum
qui nondum preterit intravit & ipsum
a firma sua predict' ejicit & alia enor-
mia ei intulit ad grave damnum, &c.*

The Old Writ runs thus :

New N.
Brev.
505.
Plow.
Com. 229.

*Intravit & Bona & Catalla ejusdem
A. ad Valentiam 10 s. in eodem Manerio
inventa cepit & asportavit ipsumq' a
firma, &c.*

Reg. Brev. 196. The Form of this Writ seems to have been taken from the *Affize*, which says, *Fatias tenementum illud reseisiri de catallis quæ in ipso capta fuerint & ipsum tenementum cum catallis esse in pace usq' ad prim' affisam, &c.* and the Reason why the Writs upon such Disseisins and Ousters ran for Goods and Chattels as well

well as the Lands, was, because antiently such Disseisins were made by Violence, the Disseisors not only taking away the Lands, but generally also the Stock that were upon them, and for removing such forcible Intrusions of one Lord upon another, by the Power of the King was the Assize invented, and after the Model of that was the Ejectment framed.

Upon the old Writ the Register has this Remark, that it can't be *de bonis & catallis asportatis*, because of such Goods a Man shall have an Exigent, and in a Writ of Ejectment Distress infinite.

But Judge *Brown* observes, that this Rule was ill taken; For true it is (says he) that in *Ejectment* Process of *Outlawry* lies as well as *Distress infinite*, and so is *Fitz Herbert*: But however the *Writ* is good either with or without these vid. Fitz New Na-
Words, and the Reason is, because a Man tura Brevin. shall accommodate his Writ to the 506. Let-
ter a. Nature of his Case; and the Precedents had appeared both ways, according as the Ouster had been with the taking away of Chattels or not; but the *Assize* has always the Clause *de Catallis*, because they recovered Damages in the *Assize* for the *Mesne Profits*, which was one of the Points complained of in that Writ, and the old Form has always been kept inviolable in that Action: But an *Ejectment* is not a proper Action for the *Mesne Profits*,

A Compendious Treatise

fits, though it may comprehend the Chatis that were taken in the very Ouster, because it was never laid with a *Continuando*, as in an Action of Trespass for the Recovery of *Mesne Profits*, and therefore could not comprehend the *Mesne Profits* that were taken during the whole Ouster, since every Act is a new Trespass; but the Assize punishes the whole Disseisin, by giving commensurate Damages from the first Act till the Time of the Action brought as one intire Disseisin.

And here shall be consider'd,
First, The Proces.

Secondly, The Form of the Writ.

First, The Proces, and I shall begin with this, because the Form of the Writ, according to Modern Proceedings, is only considerable in a Writ of Error.

The Writ itself, like all other Writs of Trespass, is an Attachment, and the Forms of Attachments run in the same Words, *Pone per vadios & salvos plegios, &c.* Whereas, in other personal Actions, they began with the Writ in nature of a Summons, commanding the Party to restore the thing in demand, before they came to an Attachment; the Reason of the Difference is this, because in this Writ, and in all other Cases of Trespass, the Party complains of a Breach of the Peace, whereon there is a Fine due to the King, therefore they give the Party no Warning

ing, lest he should withdraw himself; but in Debt, since the Plaintiff has trusted the Defendant originally, 'tis but reasonable he should give him Credit so much longer till he is summoned to appear.

Besides, in Trespass there was a Capias on the Person, because of the King's Fine, which was generally used as the second Process, and therefore the first was upon his Goods; whereas, in other personal Actions, the whole Process at common Law was on the Goods only.

Upon this Attachment the Sheriff returned Pledges *de prosecuando* in behalf of the Plaintiff, and Pledges for Appearance in behalf of the Defendant, and these were twofold, either proper Persons who undertook his Appearance, or else attached his Goods which were forfeited on his Non-appearance. In the former Case, Pledges for the Plaintiff were taken by these Words in the Writ, *Si A fecerit te securum de Clamore suo prosecuendo*; in the latter Pledges for the Defendant were by these Words in the Writ, *Pone B. per vad' & salu' Pleg'*, and so it was in an Affize, where are the same Words in the Writ. Upon which see the Sheriff's Return in the *Commentaries*.

The second Step in this Action was either by *Capias* or Distress infinite, the Distress was the Process of the Party, and the *Capias* was the Process of the King;

F. N. B.

^{200.}
New. N.

Brev. 506.

for

A Compendious Treatise

for in all personal Actions they proceed by *Summons*, *Attachment*, and *Distress infinite*: In all Criminal Prosecutions, and in all Prosecutions for Fines for the King, they proceeded by *Capias*: But in Trespasses, where the King required his Fine for the Plaintiff's Prosecution, the Plaintiff took hold of the King's Process to oblige the Party to appear.

F. N. B.
92. Brit.
Cap. 26.
f 52, 82.
H. 3. c. 7.
9. & 12.
Co. 2 Inst.
254.

If the Party was *attached* by Goods or Pledges and did not appear, the *Distressing* issued out upon all his Goods and Lands to compel him to appear, which was called the *grand Distress*, or *Distress infinite*; but if the Sheriff returned *nil* upon the *Pone*, then they proceeded to *Capias* and *Outlawry*, and the reason was, because it appeared by the Sheriff's Return, that the Defendant had nothing whereby he could be compelled to appear, and the Defendant had a Remedy if the Sheriff did not actually serve the *Attachment*, because the Trial of Service of such *Attachments* was by Examination of the Sheriff's Officers, and the Plea of not being attach'd, by fifteen *Jurors*, and was always tried by their Examination, and therefore there was no false Return against the Officer for returning a *Nil*; and the rather because the Party was little, if at all, prejudic'd, since he was discharged from the Arrest by making a proper Appearance; hence it came to pass, that the *Capias*

Br. At-
tachment
c. 12, 17,
18. 9 Co.
31.

Booth 9.

Capias at length issued as the first Process without any *Nil* returned on the *Pone*, and so when the *Capias* was given in Account, by the Statute of *Marlebridge*, which was given to the Lords when their Bailiffs had nothing to answer, ^{2 Inst. 143;} ^{144.} they first returned *Nil* on the *Summons*, and then the *Capias* issued; but for the former Reason the *Capias* afterwards issued in *Account* as the first Process, and so in Debt which was in the Similitude of *Account* by that Statute.

If in *Ejectment* it be said that the Defendant was summoned to answer, and not attached, the Declaration is ill upon a Demurrer, but after a Verdict and Writ of Error brought, if no Original be found whereby it appears there was a vicious Proceeding by *Summons*, it's aided by the Statute of *Jeofails* of the 18 *Eliz.* c. 14. which makes the Proceedings good after Verdict, tho' the Original be wanting, and tho', if there had been a vicious Original upon the File, it had been Error, yet, while there is no Original upon the File, it is helped by that Statute, and they'll intend that there was a good Original which is lost, and that the Clerk had misrecited such good Original.

I come now to the Modern Process in this Action, and now, it is not usual to make out a *Capias* against the *Possessor* upon an *Ejectment* delivered, as it was of

A Compendious Treatise

of Old, when Men were ousted of Terms for Years, but they deliver a Declaration to the Tenant in Possession in the Name of the *casual Ejector* in this Manner, with a Notice in the *casual Ejector's* Name.

The No-
tice to the
Tenant in
Possession.

J. D. you may perceive by this Declaration that I am sued as *casual Ejector* for the Lands and Tenements within specified in your Possession; (whereunto I claim no Title) I do therefore hereby give you timely Notice, that unless you appear and defend your Title this next Term, I will suffer Judgment to pass against me by Default, whereby you will be turned out of Possession; your loving Friend *A. B.* 29 December. 1710.

*V. the 2d
of 4 K. G.
the 2d.*

The Service of this Declaration, before the late Act of Parliament, must have been made either to the Tenant himself, or to his Wife, and not to any of his Children or Servants, and the reason was, because the Tenant, by having explain'd to him what was the Meaning of the Declaration, had sufficient Warning to defend himself, and this the Court did not think reasonable should come at second hand to the Tenant, unless from the Wife, who is presumed to be equally concerned in point of Interest, and in that it differs from a *Summons*, which might be either delivered to the Tenant, or upon the Land by the Sheriff's coming upon the Land,

Land, and summoning the Party to appear by setting up a white Wand, which anciently was a Mark that the Land was claimed by others.

After this Declaration delivered, the Plaintiff's Attorney was obliged to make Oath that he delivered to *J. D.* Tenant in Possession of the Premises in Question a true Copy of the annexed Declaration, with the beforementioned Indorsement or Superscription thereon, which said Indorsement, &c. the Deponent did then read to the said *J. D.* and acquainted him with the Contents thereof.

This Affidavit is to be positive, that *J. D.* was Tenant in Possession, or that the Defendant acknowledged himself to be so, because no man should be turned out of Possession without a positive Affidavit, on which he might charge the Defendant with Perjury.

Upon this Affidavit they moved for Judgment against the casual Ejector, which was granted; unless the Defendant in due Time entered into the Common Rule; and the Declaration against the casual Ejector ought to be delivered before the Essoin Day of the Issuable Term, when the Cause is designed to be tried; and it hath been adjudged that there ought to be a *Latitat* sued out against the casual Ejector and Common Bail filed, otherwise the Judgment may be set aside on Motion,

Lilly's
Pract.
Reg. 497.

Lilly P.
R. 499.

A Compendious Treatise
Motion, 2 Show. 249. *Boucher and
Friend.*

*The Rule in the Common-Pleas is as
follows.*

*Hillary Term, the Sixth of King George
the Second.*

Norfolk. It is ordered by the Consent of *Robert Martin* the Plaintiff's Attorney, and *John Cock*, Attorney for *A. B.* who claims a Title to the Tenements in Question, that the said *A. B.* be admitted Defendant, and that the said *A.* shall immediately appear by his said Attorney, who shall receive a Declaration, and plead thereto the General Issue this Term; and that the said *A.* at the Trial thereupon to be had, shall appear in his proper Person, either by his Counsel or Attorney, and acknowledge Lease, Entry, and actual Ouster, of such of the Tenements specified in the said Declaration, as are in the Possession of the said Defendant, or his Under Tenant, or any Person claiming by, or under his Title thereto, or that in Default thereof, Judgment shall be entred against the said Defendant as the casual Ejector; but the Proceedings to stay against him until there be a Default in some of the Premisses; and by the like Consent it is order'd,

order'd, that if by Reason of such Default the Plaintiff becomes nonsuited upon the Trial, the said *A.* shall take no Advantage thereof, but shall pay Costs for the same to the said Plaintiff, to be taxed by the Prothonotary. And it is further ordered, that the Leislor of the Plaintiff be chargeable with the Payment of such Costs, as shall be allowed and awarded by this Court to the said *A.* in any manner howsoever.

The Rule in the King's-Bench is as follows.

Michaelmas Term in the Sixth Year of the Reign of King George the Second.

Surry. It is ordered, with the Consent of the Attornies for both Parties, that *C. D.* be admitted Defendant instead of the now Defendant *T. P.* and that he forthwith appear at the Suit of the Plaintiff, and put in common Bail, and receive a Declaration in a Plea of Trespass, and Ejectment for the Tene-ment in question, and forthwith plead thereunto not guilty; and that upon the Trial of the Issue, he confess Lease, En-try, and actual Ouster, and insist upon the Title only, otherwise Judgment shall be entered by the Plaintiff against the now Defendant *T.* by default; and if up-on

A Compendious Treatise

on the Trial of the said Issue the said *C. D.* shall not confess Lease, Entry, and actual Ouster, by which the Plaintiff will not be able further to prosecute his Bill against the said *C.* then no Costs or Charges shall be awarded upon such Nonsuit, but the said *C.* shall pay to the Plaintiff the Costs and Charges thereupon to be taxed: And it is further ordered, that if upon the Trial of the said Issue a Verdict should be given for the Defendant, or if it should happen the Plaintiff should not further prosecute his said Bill for any other Cause, than for not confessing Lease, Entry, and actual Ouster aforesaid, that then the Plaintiff's Lessor shall pay to the said *C.* his Costs and Charges in that Case to be awarded to him.

These Rules being made by Assent of Parties, an Attachment lies for Non-performance of them, as for all other Rules of Court that are disobeyed, and this is all the Remedy which the Parties on both Sides have for their Costs.

That *J. H.* who claims Title, &c.

And if there be several Persons that claim Title, the Rule may be drawn generally or particularly, generally that *J. H.* who claims Title to the Premises in Question in his Possession, should be admitted Defendant for such Mes-
suages,

suages, and this puts a Necessity on the Plaintiff at the Assizes to distinguish by Proof what Tenements are in each Defendant's Possession, because by the Rule he is to confess Lease, Entry, and Ouster, only for the Lands in his Possession, and if the Plaintiff can't distinguish by Proof what Tenements are in each Defendant's Possession, he can have no Verdict against him, and consequently no Judgment.

Or the Rule may be drawn specially, ^{Lilly P.} that *J. H.* who claims Title to such Lands, ^{R. 499.} _{Keb.} expressing them particularly, should be ^{677.} admitted Defendant, and that supersedes the Necessity of Proof that the Lands are in his Possession; and if the Defendant's Attorney will not give a Note of the Particulars of the Land for which he was admitted Defendant, the Plaintiff may summon him before a Judge, who will order the Rule thus specially to be drawn up, in case the Party in Possession will admit himself to be Defendant; but because the Defendant's Attorney is to draw up the Rule, it being entred into by his Consent, it's often drawn up in general Terms, which puts the Plaintiff to his Proof at the Assizes, for tho' the Rule for Judgment against the casual Ejector ^{Lilly P.} _{R. 499.} be drawn up by the Plaintiff, yet that is only for Judgment against such Ejector, in case the Tenant in Possession does not enter into the common Rule by a limited

A Compendious Treatise

Time, which puts it upon the Defendant to draw up the common Rule, who is to draw it up, and leave it at the Judge's Chamber, and give Notice of it to the Plaintiff's Attorney.

L.P.R.
499.

Lilly P.R.
500.

No Person is admitted to defend in Ejectment unless he be Tenant and is or hath been in Possession, or receives the Rent, because it's an Act of Champerty for any Person to interpose to cover the Possession with his Title; and if the Party would make any Person Defendant with another who was not concerned in the Possession of the Tenements, this was a Mischief at Common Law, because recovering against one of the Defendants, there was consequently no Remedy for the Stranger for his Costs, but that is remedied by 8 and 9 Will. 3. c. 10. whereby Costs are given to such Stranger who is made Defendant, unless the Judge certifies immediately on the Trial that the Plaintiff had a probable Cause for making such Stranger Defendant.

The Rule in the *Common-Pleas* being that he shall forthwith appear, and receive a Declaration, this supercedes the Necessity of an original Writ, because the Tenant is to appear, and receive a Declaration, and therefore can't take any Advantage for want of an Original, unless in a Writ of *Error*, but when a Writ of *Error* is brought, they must file an Original, unless it be after a Verdict, when it is helped by the Statute. As

As in the *Common-Places* there is no need of an Original, so in the *King's-Bench* there is no need of a *Latitat*, or *Bill of Ejectment*, but the Party must file a *Bill of Ejectment*, besides the *Plea Roll*, in case a *Writ of Error* be brought before the Errors are assigned, tho' he must file *Bail* before he can proceed; the Reason of which is, that the *Court* has no Authority to proceed in *Ejectments* by *Bill*, unless the *Defendant* be in *Custody*; therefore *Bail* by the *Rule* is ordered to be filed, that the *Court* may have Authority to proceed, but they don't file a *Bill* in the *Office* against such a Person as a *Prisoner* of the *Court*, suggesting he is delivered to *Bail*, because he is bound by the *Rule* to receive a *Declaration*, and so they need only make up the *Plea-roll*, until a *Writ of Error* be brought, and then they must file their *Bill of Ejectment*, because in the *Writ of Error* no *Notice* is taken of the *Rule*, and therefore a *Bill* must be filed against the Person, as the *Prisoner* of the *Court*, that a proper Person privileged may appear to the superior *Jurisdiction*, and a proper *Suit* commenced against him.

But in the *King's-Bench* they may proceed by *Original*, as well as by *Bill*, because in like Manner as they may proceed against any Person privileged or bailed by the *Court*; so also they may

A Compendious Treatise

have an Original in this Court, because it is an Action of Trespass, which is originally cognizable in this Court, it being a criminal Cause, for which there is a Fine due to the King, and then there is a Declaration delivered as in the *Common-Pleas*, that the Defendant was attached to answer &c.

And there is this Benefit in proceeding by Original in the *K's-Bench*, that there is no Writ of Error but in Parliament, and therefore the Writ of Error can't be allowed but in the Intervals of Parliament; and the reason is, because no Writ of Error lay out of the Court in which the King were supposed to reside in Person, but the Legislature and the King were supposed to reside in the Court were criminal Offences were punished, because it was Part of that high Office to preserve the Publick Peace by Animadversions on such Offenders; and when the Court of *King's-Bench* had acquired a Jurisdiction in civil Causes by way of Privilege relating to the Prisoners of their own Court, it became necessary, that Subjects should not be disappointed of their Writ of Error, either by the not sitting of Parliament, or by their being employed in publick Business when they did sit, and therefore the Statute of the 27. *Eliz.* c. 8. gave a Writ of Error in the *Exchequer-Chamber* in civil Actions, among which are Ejectments,

ments, but it excepts the Case where the King is Party, and the King is supposed to be Party in all Actions which punish Trespasses in a criminal Manner, as the Ejectment is when it commences by original Writ, returnable in the *King's Bench*, and therefore there lies no Writ of Error but in Parliament on a Judgment given in *Banco Reg.* upon an Original.

Formerly in the 17th Year of *Car.* 2. the Court published a Rule, that they would not allow any Person to take Judgment against the casual Ejector without a Certificate that a Latitat was taken out, and Bail filed, because the Court had no Authority to proceed without the Defendant appear'd to be a Prisoner of the Court, unless by way of Original; but now such Motion is granted without a Certificate, because its sufficient if the Bail be filed, for a casual Ejector after the Rule drawn up, but Bail must be filed for the casual Ejector, before you can oblige the Tenant in Possession to accept the Declaration, since there is no Cause in Court against the casual Ejector, in whose Place the Tenant in Possession comes till Bail is filed against him, and therefore he is not obliged to accept a Declaration or to confess Lease, Entry, and Ouster at the Assizes, till Bail be filed, and if no such Bail be filed by the casual

Ejector, and the Plaintiff goes to trial against the Tenant in Possession, the Court will set aside any Judgment given against the casual Ejector; but if no Bail be filed in Ejectment, and a Writ of Error be brought, and it appears by the Attorney's Books, that the Attorney had his Fee to file Bail, and the Attorney was dead, then the Court ordered Bail to be filed *nunc pro tunc*, that no Error might appear upon Record, because as it was on the Part of the Defendant to file Bail, therefore he shall not be allowed to take Advantage of his own Error, and tho' the Plaintiff proceeded without any Bail filed by the Defendant, yet since the Defendant's Attorney had his Fee to file such Bail, and as there was no proper Remedy against the Defendant, because he had given the Fee; nor against the Attorney, because he was dead; therefore it became the Justice of the Court to set it right, that the Plaintiff might have no Mischief.

But there is no Necessity for a *Latitat*, because if the casual Ejector files common Bail he admits himself a Prisoner of the Court, for being admitted out to bail, implies he was once a Prisoner, and whether he came into Court regularly by *Latitat*, or not, yet the Judgment is not *coram non judice*.

If

If the casual Ejector accepts the Declaration, pleads, and thereby Judgment is given against him, the same is recorded; and it appears thereby, that he has taken a Declaration, as a privileged Person, so if the Tenant in Possession makes himself Defendant, and excepts a Declaration, he must file common Bail according to the Rule, but there is no need of a *Latitat*, because the *Latitat* is no Part of the Record; since by filing common Bail, he acknowledges himself to be a privileg'd Person, and then the Suit has as good a Commencement as it had a Beginning from the Bill. If a Party does not come to the Assizes, and confess Lease, Entry, and Ouster, according to the Rule, when he has accepted the Declaration, he can have no Writ of Error, because he is no Party to the Record against the casual Ejector, and consequently can have no Writ of Error thereon; and if upon the Declaration delivered to him, the Plaintiff is *non Pros'd*, yet the Defendant has not any Judgment thereon, to be corrected in a Writ of Error, but the Judgment is against the casual Ejector upon the other Record, because of the Words, *Et super triationem exitus cognovit Dimissionem intrationem & actualem Ejectionem, &c.*

Note, The Judgment against the *casual Ejector*, ¹ ^{Keb. 249. sir} can't be enter'd till the *Possess* <sup>H. Mid-
dleton's</sup> ^{be Case.}

A Compendious Treatise

be returned, which is endorsed, that the Nonsuit was for want of confessing Lease, Entry, and Ouster, for it does not appear that the Defendant has not complied with the Rule, till after the Assizes, at which the Cause was to have been tried, and therefore the Judgment can't be enter'd till the next Term after such Assizes.

If the Cause be adjourned for Difficulty into the *Exchequer* Chamber, since the Court itself delays the Plaintiff, they will upon a Rule delivered to the Defendant, to shew Cause to the contrary, enlarge the Term, unless the Defendant can shew very good Cause to the contrary, because the Defendant having enter'd into a Rule to confess a Lease, without mentioning the Term, it must be understood to be such a Lease as is adapted for the Trial of the Plaintiff's Title, especially, since the Defendant by coming into the Room of the casual Ejector, had delay'd the Plaintiff from getting the Possession; for tho' it may be said to be the Plaintiff's Fault for not delivering a Declaration of a Term large enough, whereon to get Judgment; yet since the Defendant delays him by the Permission of the Court, it is not fit the Original shortness of the Term should turn to his Prejudice.

Salk. 257. But this Case is said in *Salk.* to be done by Consent of Parties, that is, that the Court would not take farther Time
to

to adjourn, and deliberate where the Term was near spent, unless the Parties would consent to enlarge it, even where the Parties were hung up by an Injunction from the Court of Chancery, the Court refus'd to enlarge the Term without the Consent of the Parties, because that would be to erase and alter the Record of the Plaintiff's Declaration, which they will not do without Consent.

The Court hath changed the Plaintiff in Ejectment after the Declaration delivered, and hath enlarged the Term, where the Cause hath been long in Agitation, and Judgment entered against the Plaintiff after he is dead. 5 Mod. 333.

In Ejectment, where there are divers Defendants for the same Premises, and one appears, and confesses Lease, Entry, and the other does not, the Plaintiff can't proceed against the rest; but he must be nonsuited, because both the Defendants not admitting the Demise, and the Plaintiff not proving an actual Entry and Demise, ^{1 Vent.} ^{355.} ^{2 Vent.} ^{195. 4} he can't maintain his Declaration; but if there appear'd any Covin between such Persons not appearing, and the Lessor of the Plaintiff; the Court will stop the Judgment against the casual Ejector for their Parts that did not to release Costs, &c. because a Declaration was delivered to each of them for their respective Parts, and therefore where one does not pay Obedience

A Comprehensive Treatise

obedience to the Rule, the Plaintiff has Judgment against the Ejector for his part only.

And where there are several Defendants, to whom the Plaintiff delivers Declarations, that are severally concerned in Interest, and the Plaintiff moves to join them all in one Declaration, yet the Court will not do it, but the Plaintiff must deliver several Declarations to each of them, because each Defendant must have a Remedy for his Costs, which he could not have, if they were joined in a Declaration, and the Plaintiff prevailed only against one of them, and by this means the Plaintiff might have a Tenant of his own, Defendant, with others, in order to save the Costs.

2 Feb.
524.

The Plaintiff in Ejectment, who he is but nominal, yet if he be not found, or if he be not able to pay the Costs, the Attorney or Sollicitor is liable, or may be committed until he pay the Costs, or produce a Plaintiff that is able to pay them; *Honlee, Peters and Bucks.* 6 Mod. 309. 2 Lev. 66.

3 Feb.
772.

If the Plaintiff in Ejectment, who is but nominal, dies, yet the Action shall not abate, because if there be any other Person of the same Name, the Court will intend him to be the Person mentioned in the Declaration, because he is only nominal; and therefore while there is any Person of the Name living, the Lessor of

of the Plaintiff, who is only concerned in the Interest, may proceed in the Suit.

But if the nominal Plaintiff releases to one of the Tenants, in Possession, who is made Defendant, such Release is a good Bar, because the Plaintiff can't recover against his own Release, since he is Plaintiff on Record; but *Quare*, if such Release were pleaded, whether the Court would not permit the Lessor of the Plaintiff, to change the Name of such nominal Plaintiff? For his Release is said to be a Contempt.

The Confession of Lease, Entry, and Ouster, is not a Confession of any Entry, sufficient to make out the Plaintiff's Title; where an Entry is necessary thereunto, as if an Entry was necessary to avoid the Fine, and by C. J. Holt, or to take Advantage of a Condition broken, but C. J. Hale allow'd that the Confession of such Entry, was Evidence of an Entry, if the contrary did not appear, as if the Ejectment was delivered within the Time prescribed by the Statute, to avoid a Fine; but this is now totally disallowed, and an actual Entry must be proved, where it is necessary to compleat the Plaintiff's Title. *i. e.* Because the Defendant is compellable by the Court to confess Lease, Entry, &c. and to make that a Proof, that there was an actual Entry, which was extorted from the Defendant

Brownl.
128 to
133.

Salk. 260.

¹ Saund.
319. ¹ Sid.
223.
¹ Mod. 10.
¹ Vent.
42. & 332.
³ Keb.
² 18.
¹ Vent.
² 48.
Salk. 246.

A Compendious Treatise

fendant, and upon that Presumption, to turn the Defendant to prove the contrary, were to compel the Defendant to the Proof of a Negative, which in all Cases is difficult, and in some, impossible to be done.

Besides the Words of the Rule are, that the Defendant shall confess Lease, &c. and insist *super Titulum tantum*, and therefore the Intention of the Court, was, that the Tenant in Possession should insist upon every Thing that was necessary for the Defence of his own Title, and such is the Denial of the Plaintiff's Entry, in establishing his own Title, and therefore it is a Point that by the Rule he may insist upon, notwithstanding such Confession.

If *A.* lets to *B.* and *B.* to *C.* to try the Title, the Confession of Lease, &c. extends only to the Lease, made to *C.* and not to that made to *B.* because the Confession by the Rule extends only to the Lease made to try the Title, and not to the Lease, which is part of the Title of the Lessor of the Plaintiff, and *Hale* admitted this when he ruled the Entry to be confessed by the formal Confession of Lease, &c. for he thought that where an Entry was confessed, and a Lease, as tho' it had been made upon the Land, that thereby a Claim was confessed to the Fee-simple of the Land itself; for a Confession of Entry

¹ Vent.

² 248.

² Keb. 218.

Entry to let, he understood to be a Confession of a Claim of the Feesimple, because otherwise, he could not have Power to demise, which is confess by the Rule; but notwithstanding in this Case, the Lease in order to try the Title, being a distinct Lease from that by which the Lessor of the Plaintiff claims, he held, that must be proved.

My L. C. J. *Hales*, when he held that the Entry was sufficiently confessed by the Rule, said, that otherwise an Entry would be necessary to be proved on every Diffeizin, and indeed before this new Rule, an Entry was necessary, in order to give the Plaintiff Power to make a Lease, but after that, it was otherwise, because an Entry did not make part of the Plaintiff's Title, where the Lessor of the Plaintiff is diffeized, for he had a compleat Title before the Diffeizin which was that Injury done to him, and should have recovered Damages in an Assize from the first Act of Diffeizin, and the Design in Ejectment was without the formal Preparation of an Entry, and Lease to bring the Cause to as sudden a Tryal, and in as short a Method, as had been formerly used in an Assize.

Note, if a Man enters and delivers a Declaration in Behalf of the Lessor of the Plaintiff; this is no Entry to avoid a Fine, unless an express Authority was given

A Compendious Treatise

given to enter for that Purpose, because the Entry must be pursuant to the Intention, and that was, to deliver a Declaration, in order to try the Plaintiff's Title, and not to make any Title to the Lessor of the Plaintiff.

Aliter Judicium intretur per defactum pro Quer.

From hence it is, that Judgment is given against the casual Ejector for want of confessing Lease, &c. at the Assizes; and if the Defendant does not enter into the Defence, and confess Lease, &c. he can't bring a Writ of Error to reverse a Judgment, to which he was not a Party, and if he brings such Writ in the Name of the casual Ejector, the casual Ejector being a Friend to the Plaintiff's Lessor, may either release the Errors, or upon a Motion for a *non Pross* the Court will order it to be entered; but in a Writ of Error from an inferior Court in the casual Ejector's Name, the Court will not enter a *non Pross* tho' his Release of Errors be shewn, because they ought not to proceed in this compendious Way, by confessing Lease, &c.

By the Words of the Rule antiently made, it appears that the original Practice in *Baron Regis*, was that upon confessing Lease, &c. the Defendant paid no Costs for it.

Thus

Thus the Words of the Rule differ'd from that of the Common-Place, which are, that the said Defendant should pay to the Plaintiff, his Costs to be taxed by the Prothonotary, thereon; but in *Banca Regis*, ^{See before} ^{Page 14.} the Rule only excused the Plaintiff from the Costs of the *non Pross.* in case the Defendant did not at the Assizes confess Leafe, &c. and therefore in 13. Car. 2. upon a Motion that the Defendant should pay Costs for not confessing Leafe, &c. it was denied, but afterwards the Rule came to be, that upon the Defendant's denying at the Assizes to confess Leafe, &c. the Rule for confessing it should be carried to the Master, who tax'd Costs upon it, which Costs were to be demanded of the Defendant, by some Person having Authority from the Plaintiff's Lawyer, for so doing, and if the same were not paid, the Court, upon Affidavit and Motion, would grant an Attachment against the Defendant; for it is but reasonable, that when the Plaintiff is at L. P. R. Charges to bring his Witnesses to a Trial, ^{504. 1.} ^{Keb. 502.} the Defendant that deprives him of the ^{Willc. &} Benefit of that Trial, should pay his Costs; ^{Haie.} and the new Rule now runs, *Et si super- triacitatem emitus illius predictus A. recusabit performance istam regulam & quarens ratione inde non prosequi potest breve suam tunc taxatio Cuyusiorum super bujus modi non prosecutione cessabit & pra-*

A Compendious Treatise

See before
Page 14.

& predictus A solverit talia Custagia querenti qualia per Curiam Domini Regis hic taxabuntur & adjudicabuntur pro tali defectu suo in non performance hujus regule & judicium intrabitur versus eundem C. modo casualem ejecorem per defalatum. Et ulterius ordinatum est, quod si veredictum redditum fuerit pro predict' (the Defendant) vel quod predict' quer' non Pros' foret propter aliquam aliam Causam quam pro non Cognitione Dimissionis, &c. and so to the End of the Rule. So that it appears by the new Rule, that the Practice was altered in compliance with the *Common-Pleas*, that the whole Business of Ejctions might not run thro' that Court.

If an Infant be Tenant in Possession, and the Plaintiff obtains Judgment against the casual Ejector for want of Confession of Lease, &c. and the Infant brings a Writ of Error in the Casual Ejector's Name, and the Defendant in Error, sets up a Release from the casual Ejector, upon making this out to be the Case of the Infant, on Motion on the Writ of Error, the Court will not suffer such a Release to be pleaded in Bar to such Error, because there is no Latches to be imputed to the Infant, for want of Confession of Lease, &c. and therefore here they renew the old Practice, to suffer the Defendant below

low, to carry on the Suit in the Ejector's Name to the End.

If there be Baron and Feme Lessor in Ejectment, and one dies after entring into the Rule, the surviving Person is liable to pay Costs, because Costs are to be paid *per Dimissorem quer'* and both of them are in the Lease. ^{1 Keb. 817.}

If a Stranger carries on a Suit in another's Name, who has a Title, and yet is so poor that he can't pay Costs; in case he fails, upon Affidavit of this Matter, the Court will order such Person, who carries on the Suit, to pay Costs to the Defendant. ^{1 Keb. 817.}

If an Infant delivers a Declaration to the Defendant, some Friend or Guardian must be set up as Plaintiff to answer the Defendant's Costs. But if such Person dies insolvent, so that the Defendant has no Remedy by this Rule, the Infant himself must answer the Costs; because the Rule was enter'd into for the Infant's Benefit, and even Infants must not disturb the Possession of others by unlawful Entries, without being punish'd with Costs.

If a Man has a Verdict in Ejectment, ^{1 Sid. 379.} and Costs taxed, and an Attachment issues for non-payment of the Costs, the Defendant shall not have an Ejectment against the Plaintiff in the same Court, till he has paid Costs; but he may proceed

A Compendious Treatise

in Ejectment in another Court, without Costs paid; the Reason is, because the same Court will see an Obedience paid to their Rules, before they will suffer the disobedient Person to proceed in a Cause of the same kind, but another Court can't take Cognisance of the Rules of a distinct Court, but every Court can inforce Obedience to its own Rules.

I shall here take Notice in what Cases they must proceed in the old Method, and where they could not have proper Remedies

Salk. 255.

by proceeding in the modern Way by Confession, &c. and this, before the late Act of Parliament, was in the following Cases.

First, Where the Houses, or Things, for which the Ejectment was brought were empty; for in that Case no Declaration could be delivered, or Affidavit made of the Delivery of it, and then the Court could not proceed to grant Judgment against the casual Ejector, and therefore they were forced to proceed the old Way, by sealing a Lease on the Land, and give Rules to plead; and when those Rules for Pleading were out, they were to make an Affidavit of this whole Matter; and upon such Affidavit, the Court granted Judgment; but there could be no Judgment against the casual Ejector, without moving the Court, tho' the Rules for pleading were out, because the Court will

will not grant any Judgment against the casual Ejector, who is only nominal, without such proper Affidavit; lest, otherwise, a third Person should be trick'd out of his Possession.

So if the Tenant in Possession kept his ^{15 Car. 2.}
^{B. R. P.}
^{Mo. 101.} Door shut, the best Way was to seal a Lease on the Land as usually, before these Rules were invented; but it seems, in Case, that the Practice and Fraud of the Tenant had been made appear to the Court by Affidavit, the Court would grant Judgment against the casual Ejector, *nisi*, &c. for then the Fraud of the Tenant superseded the Necessity of giving Notice to him; but by the following Act of Parliament it may be perceived the Law is alter'd therein.

Secondly, When a Corporation is Lessee of the Plaintiff, they must give a Letter of Attorney to some Person, to enter and seal a Lease upon the Land; for a Corporation can't make an Attorney, or Bailiff, but by Deed, nor can they appear, but by making a proper Person their Attorney by Deed; therefore they can't enter and demise upon the Land in Person, as natural Persons can, nor can they substitute an Attorney, to enter into a Rule for their Costs, nor will an Attachment go against them for Disobedience to that Rule, and by Consequence they are put to make an actual Lease upon the Land,

D 2 which

A Compendious Treatise

which Lease must try their Title, and then the Attorney may proceed in the common Method, that is not alter'd by the said Statute.

Dy. 86 in
the Mar-
gin.

If a Corporation be aggregate of many, they may set forth the Demise in the Declaration, without mentioning the Christian Name of the Master or Wardens of the Corporation; but if the Corporation be sole, the Name of Baptism must be inserted, as if the Demise be made by a Bishop, because where the Corporation is aggregate, the Name solely consists in its Character, but where sole, it consists totally in that Person, therefore you have no sufficient Specification of that Person, without mentioning his Name.

Thirdly, The third Case in which the old Method is to be observed, is, where the several Interests of the Lessors of the Plaintiff be not known, and there, it is a good Way to seal a Lease upon the Premises, lest they should fail in setting out in their Declarations the several Interests which each Man passes; and in that Case it is the best Way to proceed in the old manner, even now.

Fourthly, Where the Proceedings are in an inferior Court, there they must proceed by actually sealing a Lease, because they can't make Rules to confess Lease, &c. inasmuch as such Courts have not an Authority to imprison for

Disobe-

Disobedience to their Rules; and the Reason is, the inferior Courts, having but a limited Authority, can't make any new Rules to bind Persons that don't come in by proper Proces of such Court; but the Courts above, having an unlimited Authority in every thing within their Jurisdiction, shall bind any Person that consents to their Rules; and therefore in such inferior Courts the Lease is sealed on the Land, and the Defendant tries the Title in the Name of the casual Ejector, ^{1 Keb.} 795, 6. to save Expence.

If an Ejectment be brought in an inferior Court, and a *Habeas Corpus* be brought to remove it, and the Plaintiff in the Ejectment declares against the casual Ejector, there may be a Rule, to confess Lease, &c. as if he had originally declared in the Court above, and the Court will not grant a *Procedendo*.

If a *Habeas Corpus* be brought to re- ^{2 Keb. 119.} move a Cause in Ejectment out of an inferior Court, and the Lands lie within their Jurisdiction, and the Lessor of the Plaintiff seals a Lease on the Premises, the Courts above will grant a *Procedendo*, because the Title of the Land is a local Matter, properly within the Jurisdiction of the Court below, where, if they proceed regularly, they shall not be prohibited; but if the Lessor has not sealed

**A Compendious Treatise
a Lease on the Premises, they will
not.**

2 Keb. 69. But if the Lands do lie partly within the *Cinque Ports*, and partly without, the Defendant can't plead above the Jurisdiction of the *Cinque Ports*; for tho' the Land be local Matter, yet the Demise is transitory, and triable any where; therefore, tho' the Plaintiff may lay his Action for that which lies within an inferior Jurisdiction in the Court below, if he takes proper Measures for that Purpose; yet if he will lay it above, since the Demise is transitory, the Defendant can't stop his Proceeding, because the Courts above, for such transitory Matters, have a proper Jurisdiction.

**M. 18.
Car. B. R.
Moore 86.** It seems that if the Defendant in an inferior Court comes into a Rule to confess Lease, &c. and the Cause be removed by *Habeas Corpus*, and the Judge of the inferior Court grants an Attachment against the Defendant for Disobedi-

1 Keb. 785. ence to the Rule, the superior Court will grant an Attachment against such Judge for compelling Obedience to their Rules, and thereby obstructing the Business of the superior Courts; since the Defendant is not bound by the Rule he entered into in the inferior Court, such Rule being only the Practice of the superior Courts.

I shall here shew the Manner of the old way of proceeding in Ejectment; and that

that was, by sealing a Lease on the Premises by the Party in Interest, who was to try the Title.

This at first was ruled to be no Maintenance, or within the Statute for buying of Titles, since the Lessor demises on the Land, and so is in Possession, if the Lease was made to Servants or Friends that could not be presumed to maintain or countenance the Action; but if it were sealed to a great Man, who might maintain the Suit, this was properly ^{Styles P.} _{R. 165.} Maintainance.

If a Man seals a Lease upon the Premises, he need not give Notice to the Party in Interest, at the time of his Entry, or sealing such Lease; but it is sufficient to give Notice to the Tenant in Possession afterwards where it was done, that being sufficient Notice for the Party to make his Defence; and it is not necessary that the Plaintiff should give Notice of his Preparation, but of his Trial.

By the antient Method, the Person, ^{Sty. Rep.} _{468. Ray.} that had Title of Entry, used to enter ^{93.} upon the several Parcels of the Land, ^{1 Keb.} and deliver Declarations in the Name of ^{705. 740.} his own casual Ejector, who did actually enter on the Premises to eject, but the Court required Notice to the Tenant in Possession, that he might not be turned out without an Opportunity of making his Defence; and then such Tenant in

A Compendious Treatise

Possession used to move the Court, that as the Title of the Land belonged to him, he might defend in the casual Ejector's Name, which the Court upon an Affidavit of that Matter used to grant, and that the Suit should be carried on in the casual Ejector's Name, the Tenant in Possession saving him harmless ; and then the casual Ejector was not permitted to release Errors in prejudice of the Tenant in Possession, since the Suit was carried on in his Name by Rule of Court, and the Process for Costs was taken out against the casual Ejector, and he was obliged to put the Bond of the Tenant in Possession in Suit, who undertook to save him harmless,

Co. Lit.
52. Palm.
402.

In the old Way of proceeding in Ejectment, if there were several Parcels of Land, in the Possession of several Persons, the Way was, to make several Leafes, and to deliver several Declarations upon such several Leafes to the Tenants in Possession, and that was absolutely necessary when the Freehold was in distinct Persons ; but where the Freehold was in the same Person, there the Difference was, whether it was in the County, or not ; for where different Entries were necessary, there were to be different Leafes ; and before the late Act of Parliament, where there was one Disseisor of Lands in one County, tho' he demised for

for some Years, or at will, to several Persons, yet I might enter upon one of such Lessees in the Name of all, and make a Lease according to the old Method, and comprehend them all therein; and the Reason was, because the Entry to divest Freeholds must be made according as the Freehold divides itself; and therefore, if the disseisor has made a Lease for Life to three several Persons, the Entry must have been several, and the Leafes several also; but if one had disseized me of two Acres in the same County, and I entered into one, without saying in the Name of both, such Entry did not divest the Right; and therefore where there were several Acres put in the same Declaration, and they made their Entry in the old Way, it must have been in the Name of all the Acres named in such Declaration, because otherwise, the Entry being not interpreted by Words, the Act of Entry should go no farther than the lowest Measure of Land into which he entered.

To understand this, we must consider, that the Entry was the same thing with the Vindication or *Calumnia* in the Civil Law, and this Entry was of equal Notoriety with the Feoffment; for as the Feoffment was anciently made upon the Land *Coram paribus*, who subscribed the feudal Instrument in *biis testibus*; so it seems the Entry was made upon the Land, and

Digest.
Feud. v.
lib. 2. tit.
8. tit 2.
Donarius
441. 2.

A Compendious Treatise

and afterwards the Claim recorded in the Lord's Court, and hence called *Clameum*, *vel Calumnium apponere, vel Advoare*; but afterwards they allowed the Feoffment to be good, tho' it was attested by Strangers out of the Land, and not made or recorded *coram paribus*; but the Manner of recording the Claim of Liberties before the Justices in Eyre remained long after, as appeared by the Register, which seems to be a continuance of the antient Practice; but when the Feoffment was not attested by the Parties in *Cartis*, yet they were attested and tried by the *Pares Comitatus*; and therefore if the Land lay in two Counties, the Entry must have been in each, because the Attestation of both Facts, if controverted, must have been tried by the *Pares Comitatus*.

If Husband and Wife make a Lease by Indenture, and in it make a Letter of Attorney to seal and deliver it as their Deed to the Lessee upon the Land, and such Lessee, in order to try the Title of the Land, declares, upon a Lease made by Husband and Wife, it is bad; but if there be a Necessity to try the Title of the Wife in the old Method, the Husband and Wife must execute the Lease upon the Land, in their proper Persons; because the Wife, not being a proper Person by herself, can't constitute an Attorney; but this Practice is sunk by the new Method,

Cr. Car.
165. Cr.
Jac. 563.
Velv. 1.
2. Brow.
248. Hob.
314.

thod, since by the Rule the Demise is confessed as supposed to be made on the Land.

The Act of Parliament that has been often mentioned, which in several Instances hath alter'd the Common Law, is an A&t passed in the fourth of King George the Second, which is as follows:

Be it Enacted, That in case any Tenant for Life, or any Term of Years, or other Person coming into the Possession of Lands or Tenements by Collusion with such Tenant, shall wilfully hold over any Lands or Tenements after the Determination of such Term or Terms, and after Demand made, or Notice in Writing given, for delivering the Possession thereof by the Landlord or Lessor, the Person so holding over shall pay double the yearly Value, and the Defendant in such Action shall give Special Bail, and have no Relief in Equity.

In all Cases between Landlord and Tenant, after the twenty-fourth of June, one thousand seven hundred and thirty one, when Half a Year's Rent shall be in Arrear, the Landlord, having a lawful Right to re-enter for Non-payment, may serve a Declaration in Ejectment, without a formal Demand or Re-entry, or affix such Declaration on the Door of any demised Messuage, or notorious Place of the Lands, which shall be deemed a legal Service; and on Proof that half a Year's

A Compendious Treatise

Year's Rent was due before the said Declaration was served, and no sufficient Distress on the Premises, the Lessor shall recover Judgment and Execution as fully as in case a formal Re-entry had been made; and if the Lessee shall suffer Judgment to be recovered on such Ejectment and Execution, without paying the Arrears and Costs, and without filing a Bill within six Months after Execution, he shall be barred from all Relief in Law or Equity, other than by Writ of Error; and the Lessor shall hold the demised Premises as discharged from such Lease: But not to bar the Right of any Mortgagee, provided he pay all Rent in Arrear, and Costs, within six Months after Judgment obtained, and perform all the Covenants of the Lessee.

If a Lessee shall, within the Time aforesaid, file a Bill for Relief in Equity, no Injunction is to be granted, unless he, within forty Days after an Answer filed by the Lessor, shall deposit in Court the whole Rent in Arrear, besides Costs, subject to the Decree of the Court; and if the Lessor shall actually enter into the Possession of the demised Premises, and the Lessee on filing a Bill within the Time limited, obtain a Decree in his Favour, the Lessor is to be accountable only for the Profits really made of the Premises during his Possession thereof, and the

the Lessee is to pay to the Lessor so much Money as that fell short of the whole Rent in Arrear, before he be restored to his former Possession.

But if the Tenant, before the Trial, will either tender to the Lessor, or bring into Court, the Rent in Arrear, together with Costs, all further Proceedings shall cease; and if the Lessee be relieved in Equity, he shall enjoy the demised Premises, according to the Lease thereof, without obtaining a new one.

All Persons, Bodies Politick and Corporate, may have the like Remedy by Distress and Sale, in cases of Rent-seck, Rents of Assize, and chief Rents, which have been duly paid for three Years, within twenty Years before the first Day of the Parliament, or shall be hereafter created, as in case of Rent reserved upon Lease.

If any Lease shall be duly surrendered, in order to be renewed, and a new Lease granted by the chief Landlord, it shall be as good and valid, as if all the Under-Leases had been likewise surrendered, before the taking such new Lease; and all Persons vested therewith, shall be intitled to the Rents, and have the like Remedy for the Recovery thereof, and the Under-Lessees are to enjoy the demised Premises as fully, as if the original Leases had been still continued; and

A Compendious Treatise

and the chief Landlord shall have the same Remedy for recovering his Rent, as he would have had, in case the respective Under-Leases had been renewed under such new principal Lease. This Act not to extend to Scotland.

We come now to the Writ.

^{1 Keb. 278.} And here the first Words of the Writ are
^{281.} *Si A. fecerit te Securum de Clamore suo;*
^{594.} Cro. Car. which gives Authority to the Sheriff to
^{Sir W.} take Pledges of the Plaintiff; And the
^{Jones 439.} Sheriff has no power to attach the De-
^{446.} Cro. Jac. fendant by virtue of such Writ, unless
^{414.} the Plaintiff first finds Security to pro-
 secute the Suit: and therefore the Sheriff
 must first return Pledges *de Prosequendo*
 upon such Writ, tho' they be only *J. Doe*
 and *R. Roe*, or else the Court hath no
 power to proceed: But it seems tho' that
 this be Error, yet since only the Roll is
 returned upon a Writ of Error, such Er-
 ror can't be Assigned till *Diminutione* be
 alledged by the Plaintiff in Error, upon
 which a *Certiorari* Issues to certify the
 Original which is the foundation of the
 Suit; and if upon such a *Certiorari* an
 Original be certified without Pledges to
 prosecute 'tis Error; for tho' the Sta-
 tute of Jeofails helps the want of an
 Original after Verdict, yet it does not
 cure an ill Original; but it seems that if
 the

the Court be moved before the certifying such Original, they'll give 'em leave to amend and add the Pledges of Prosecution, since they are now grown into matter of Form ; and the Declaration is not now delivered on the Original Writ, but by virtue of the Rule ; but it seems, That the Judgment given in an Inferior Court, and not at *Westminster*, is erroneous for the want of such Pledges ; and it seems that the Pledges *de Prosequendo* were originally taken to answer the King's Amerciament *pro falso Clamore* of the Plaintiff, in Case Judgment shou'd be given against him ; and the King therefore gives no power to proceed without such Security taken to answer his Amercements.

The next Words in the Writ are, viz. *Pone per vadlos et salvos plegios*, which we have commented upon as the Attachment, set forth in the original Proces.

The next Word in the Writ is *Osten-* Psalm 44. *surus*, and if this Word be omitted in the Writ itself, it seems to be Error, because the Defendant is attached to answer, otherwise it does not appear for what purpose.

Quare vi et Armis, if these Words ^{1. Keb.} be omitted in the Writ, it is an Error ^{164.} incurable ; because there must appear such a trespass in the Writ as will give the King a Fine, which can't be without the said Words be inserted. If

A Compendious Treatise

If the Bill or Writ, while the Proceedings were in *Latin*, had been *unum clausum terre*, i. e. a Close of Land, instead of *unam acram terre*, i. e. an Acre of Land, 'tis bad; because the particular Quantities and Certainties of the Land are not set forth, of which see hereafter more under Title *Declaration*; but if there be a Paper Book in the Office which has it *unam acram*, they will amend the Bill or the Writ by such Paper Book, because then it only appears to be a Misprision of the Clerk in engrossing the same in Parchment.

2 Vent.

173.
Hob. 249.
March. &
Sperry.
1 Rol. 198.
201.

If the Writ had been *Devit*, i. e. that he devised, instead of *Dimisit*, i. e. that he demised, yet the Court on Motion will amend it, because 'tis plainly the Misprision of the Clerk in transcribing the same.

Of the Teste of the Writ.

Booth 50.

And anciently there were fifteen Days between the Teste and Return, as also in the Jury Proces, and other Judicial Writs, which anciently was thought a sufficient time for a Man to come up from any part of the Kingdom, to answer the Plaintiff's Demands in the Courts above; but this is taken away by the Statute 13 Car. 2. cap. 282, in Ejectment expressly, and all other personal Actions.

If

If in a Writ of *Error*, the Plaintiff in *Error* alledges *Diminution*, because the *Roll* is sent without an *Original*, upon which a *Certiorari* goes for the *Original*, and an *Original* be thereon returned bearing date before the *Demise* laid in the *Declaration*; this *prima facie* is *Vitios*, because there was no cause of Action in the Plaintiff at the time that the *Original* was commenced: But if upon the *Sci. fa: ad audiend. Errorres* against the Defendant in *Error*, the Defendant comes in and alledges *Diminution* That, that was not the *Original* upon which he declared; the Court will grant a new *Certiorari*; because the Plaintiff in *Error* had the bringing in the first *Original* that was *certifyed*, and therefore might form mistakes in it, in order to reverse the Defendant's *Judgment*; and if upon such new *Certiorari* they certify an *Original*, bearing even date with the *Demise* and *Ouster*, the Court will intend the Action was founded upon the Second *Original* and not on the First, and the Plaintiff in *Error* will not be allowed to make any Allegations to the Contrary; but where the first *Original* *certifyed* was before the *Demise* and *Ouster*, and the *second Original* *certifyed* was after appearance and *imparlance*, there the Court doubted whether either of these *Originals* would be good; for the first *Original* was commenced before the Plaintiff

A Compendious Treatise

Plaintiff appeared to have a cause of Action, and the second, &c. after the Action commenced, and so not a sufficient Foundation for the Action.

2 Vent:
174.
Tonstal.
ver.
Bread.

If a Declaration be of *Michaelmas Term*, and the Demise is laid on the 30th of *October*, and to help this a Writ is purchased bearing *Teste* the second of *November*; tho' it bears *Teste* within the Term, which is unusual, yet in order to cure the Mistake which otherwise might be alledged in the Plaintiff's Declaration, after Verdict, 'twas allowed to be good.

Cro. 2. Car.
91.

So if in the first Original upon the *Certiorari* of the Plaintiff in Error, the demise appear'd to be for three Years, and the Declaration shewed the Demise to be for five Years; upon the Plaintiff's coming in and obtaining a second *Certiorari*, he may purchase a new *Original* to be certified thereon, setting forth a Demise for five Years conformable to the Declaration.

Lilly P.R.
503.

If a Man delivers a Declaration against the *Casual Ejector* as of *Easter Term*, which must be delivered before the Essoin Day of *Trinity Term*, and the Plaintiff's Title arises after *Easter Term*, if the Tenant in Possession comes in and accepts a Declaration, it must be of *Trinity Term*, and then the Plaintiff will be able to shew a good Title on that Declaration of *Trinity Term*, which will be after his Title accrued; for the

the Declaration which was of *Easter Term*, being against the *Casual Ejector*, is perfectly out of the Case ; because he proceeds to Issue upon a Declaration in *Trinity Term*, which is after the Plaintiff's Title accrued ; and if the Defendant will not proceed to Issue, and confess *Lease*, &c. he has no remedy ; because the Plaintiff can take his Judgment upon the Declaration against the *Casual Ejector*, to which the Defendant is not a Party.

If a Man brings an Ejectment, and lays ^{Lilly. 503;} a Demise on the 1st day of *October*, and then he has a Title, as suppose an Estate for another's Life, and the first of *January* the *ceſty quevie* dies, and then the Title appears to be in the Defendant, the Plaintiff shall proceed in the Action and recover his Damages, but he shall not recover the Possession ; because that by the Verdict it appears to belong to the Defendant ; but the Plaintiff recovers his Damages, because it appears that the Defendant unjustly withheld the Possession at the time of the Action brought.

An Attorney of the Court was with ^{Stiles Rep.} another made *Nominal Plaintiff* in Ejectment, and the Court would not grant an imparlance to the Defendant ; because the Attorney claims his privilege to be answered the same Term, because he is always resident in the Court ; but this

A Compendious Treatise

way of hastening the Cause is now out of Doors, since the delivering the Declaration to the Casual Ejector before the Term, forces the Defendant to issue the same Term, which is equally expeditious.

The want of an Original after a Verdict is helped by the Statute of the 18 *Elizabeth*; and the want of filing a Bill in the *King's-Bench*, is helped in the same manner by the equity of the Statute; for the Bill in the *King's-Bench* is in the Nature of an Original.

^{1 Bro. 235.} ^{Hob. 249.} Where an Action of *Ejectment*, and an Action of *Assault and Battery* were join'd in the same Writ, after a Verdict it was moved in Arrest of Judgment; because the *Battery* was joined with the *Ejectment*, and the Damages being found entire, the Plaintiff cannot release the Damages in the *Battery*, to take his Judgment and Execution in *Ejectment*: But it seems, that if by the Verdict, the Damages be found severally, he may release the Damages in *Battery*, and take Judgment in *Ejectment*: the reason is, because where the *Damages* are Entire, It does not appear that the Plaintiff recovered by any Title in *Ejectment*, and therefore it cannot be seen by the Court, whether these two Actions were not Originally joined, that the Plaintiff might have a recovery in one of them to save his

his Costs in the other. But where the Damages are given severally, it appears that the Plaintiff had a good Title in both Cases; and therefore if he releases his Damages in *Battery*, which was misjoined with the *Ejectment*, there is no reason but he should take his Judgment in *Ejectment*; for though the Court must Judge the joyned of the Action to be bad, where it appears to be a contrivance to save Costs, which is the mischief of joyning different Actions; yet where there appears to be good Cause in both Cases, and the joyning of the Action is cured by the *Release*, it is fit the Plaintiff should have Judgment according to his Right.

Having thus considered the Writ and Process,

Thirdly, Of the Declaration.

And herein we are to consider, 1st, *Of what Things an Ejectment will lie.* 2dly, *Of the right of Entry in the Lessor, and the Demise to the Plaintiff.*

First, Where and of what Things an Ejectment lies.

It is before observed, that originally in this Action only *Damages*, and not the Possession itself was recovered; but as *Terms for Years* began to swell to a great length, by being put out of the Power of the Freeholder, and from the advantages it had of the Freehold, it not being

A Compendious Treatise

subject to the several Duties as the Free-hold was, it became reasonable and necessary to give the Writ of *Habere facias Possessionem*, to recover the Possession itself.

And when the Possession was given in the Action, it was necessary to confine it to such things as the Sheriff might have recourse to after Judgment, to deliver the Possession of; but after the formation of this Action, they did not confine it to the Rules in the Register to govern the *Precipe*, but allowed it to be brought for some Things which could not be demanded in the *Precipe quod Reddat*.

1 Leon.
58. Ejectment doth lie, of an *Orchard*,
Cro. El. because it is a Word of certain Signification, though in a *Precipe*, it must be
854. Cro. 2. Jac. demanded by the Name of a *Garden*;
654. Noy. 37. and it being well enough understood, the Sheriff may with Certainty deliver it upon an Execution.

So an Ejectment has been allowed for a *Stable* and a *Cottage*, because they are Words of a determinate Signification, and may be delivered by the Writ of Execution.

An Ejectment of an *House*, is good, though in the *Precipe* it ought to be demanded by the Name of a *Messuage*; because the Ejectment is an Action of Trespass in its Nature, and as Trespass, *wherfore he broke into the House*, has been

been allowed, so they allowed it good in Ejectment; the import and certain signification of the Word *Domus* or a House, being well enough understood in the Law; for in *waste* the Thing itself is recovered besides Damages, and yet the Action of *waste* is given *de Domibus*.

So an Ejectment of a *Chamber* in the second Story of such a House, was held good, there being Certainty enough to direct the Sheriff in the Execution.

But an Ejectment of a *Kitchen* is naught; for though the word is well enough understood, yet because any Chamber in the House is applicable to that use, the Sheriff hath not Certainty enough to direct him in the Execution, in regard the *Kitchen* may be changed between the Judgment and Execution.

N. B. An Ejectment lies not of a *Close*, because it is of an uncertain extent; nor will it mend the Declaration though the *Close* be called by a particular Name, because that also leaves the Extent of it uncertain, so that the Sheriff cannot tell what quantity of Land to deliver in Execution; and though the Number of Acres contained in the *Close* should be mentioned in the Declaration, and be set forth to belong to a *Messuage* for which the Ejectment was also brought, yet even that hath been held too general, because the Nature, and Qualification of the

Carth. 104.
Knight. &
Syons.

A Compendious Treatise

Land is thereby left uncertain, so that the Sheriff is still at a loss what to deliver the Possession of, as whether *Meadow, Pasture, &c.*

Cro. Jac. 435-36. 4 Mod. 98. Palm. 102. But an Ejectment for the *Closes*, called *D.* containing three Acres of Land, was held to be well enough, because the Quantity of Land is mentioned, the word *terra* signifying in Law arable Land.

An Ejectment for five Closes, called Furlong, containing ten Acres of Arable and Pasture is naught, because it is not specified how many Acres of each there is, and consequently the Sheriff hath no Rule to govern himself by in the Execution.

• But an Ejectment for a certain Place called the Vestry in *D.* is well enough; because that Place belonging to a Church, called a *Vestry*, is perfectly known; and therefore the thing demanded is sufficiently described to have Execution thereof.

Styles 264. Cro. El. 186. An Ejectment for three Messuages or Tenements is too uncertain, the word *Tenement* being of a more extensive signification than the word *Messuage*, and consequently uncertain what is demanded by the Ejectment.

2 Mod. 238. But an Ejectment for a Messuage or Tenement, called the *Black Swan*, is good; because the addition reduceth it to a Certainty of a Dwelling House.

So an Ejectment for a *Messuage* or *Bur-^{Hard. 137.}gage*, in *H.* is good; because both signify the same thing in a Borrough.

An Ejectment did not lie while the Proceedings were in Latin *de Repitorio*, because it signifies a *Voider* or *Cupboard* ^{Cro. Car. 555.} ^{1. Jones. 454.} as well as a *Warehouse*, and therefore uncertain what is demanded; but if it had been with an *Anglice* a *Warehouse*, this had confined it to that particular Thing.

So that the design of the Law in this Action is, to have the thing demanded so particularly specified, that the Sheriff may certainly know what to give the Possession of, if the Plaintiff should recover; for the Judgment, is in order to Execution, and the Judgment would be vain if Execution cannot be had of the thing specifically demanded; and as they extend this remedy or Action further than the *Precipe*, and allowed some things to be recovered in this Action, which could not be demanded in the *Precipe*, because since the Establishment of that real Action, many things have been added and improved by Art, and acquired new Appellations, that are perfectly understood now by the Law, which are not found in the ancient Law Books; and as Men began to contract by new Names, which were not known in the old Law, so it was reasonable to suffer the Remedy to follow the Nature of such Contracts; yet

yet they could not extend this Action as far as they went in the *Affize*, for such Contracts ; because the Recognitors having the view of the thing demanded in the *Affize*, must have more certain knowledge of the thing demanded than could be given in the Ejectment.

Dy. 84.

Pl. 85.

So an Ejectment did not lie *de Crofto*, though an *Affize* will ; but if an Ejectment be brought for a Croft and an Acre of Meadow, and the Plaintiff hath a Verdict, he may have a special Judgment for his *Acre of Meadow* releasing the Costs and Damages for all ; for he was allowed his Costs, because by the Judgment he had just cause of Suit against the Defendant. Query, if it lies for a Croft *vocat. B.*

Cro. Car.

573.

2 Sho.

338.

An Ejectment was brought for a *Messuage*, and four Acres of *Land Meadow* and *Pasture* thereto belonging, without specifying how many Acres there were of *Meadow*, and how many of *Pasture*, and for this reason the Judgment was reversed on a Writ of Error.

1. Mod.

90.

Cro. Car.

179.

But an Ejectment for ten Acres, *Fampnorum et Bruerarum*, was held well enough, because both are Lands of the same Nature, *viz. Heath*, and therefore the words are understood to have the same certain Signification in Law.

An Ejectment for One hundred Acres ^{Cro. Car.} of Waste, or *pro centum Acris Montis* was ^{573.} _{2 Sh. 338,} held naught for the Uncertainty; because both *Waste* and *Mountain* comprehend several sorts of Lands; but for one hundred Acres of *Bogg*, is good in *Ireland*; because the word there hath but one Signification and comprehends but one sort of Land.

But an Ejectment *pro quatuor Molen-* ^{Salk. 255;} *dinis* was good, without saying *Wind-* *Mills*, or *Water-Mills*; because both are comprehended under that Name in the *Register*.

The Plaintiff in Ejectment declared upon the Leaf of a House, ten Acres of *Land* and twenty Acres of *Meadow*, by the Name of a House, and ten Acres of *Meadow* be the same more or less, and had a Verdict; but the Judgment was Arrested: for the Declaration was so repugnant and uncertain, that even the Verdict could not help it, in regard the Land mentioned in the Declaration is of a different Nature from that mentioned in the *Pernomen*; besides the number of Acres is so different that the words more or less cannot reduce it to any Certainty, for it were unreasonable to extend them to twenty Acres more than was mentioned in the *Pernomen*.

An Ejectment *de decem Acris Pisa-* *rum*, was held good, for the Court held
 ten

A Compendious Treatise

ten Acres of Pease, and ten Acres sowed with Pease to be all one, and therefore certain enough.

1 Bro. 150. An Ejectment for a *Manor* seems ill, without describing the Quantity and Species of the Land contained therein; and if the several Sorts of Land and Messuages be set forth, and the Jury found the Defendant Guilty, *quoad Messuagium, & Curtilagium, et non Culp. quoad residuum*, Query, if this had been a good Verdict, on which Judgment might be given.

An Ejectment was brought *de Castro villa & terris*, and held without expressing the Number and Certainty of Acres; on a Verdict and a Writ of Error brought thereon, because it was too generally Demanded, and it was impossible for the Sheriff to know what quantity of *Land* he must deliver upon the *Habere factum Possessionem*.

2 Ro. Rep.
Warren & Wakely,
167.

An Ejectment brought for ten Acres of *Wood*, and ten Acres of *Under-Wood*, this was insisted as a *bis petitum* in Error, but disallowed; because plainly they are of different Natures, and those who argued for the Error seemed by their Argument to have admitted it themselves, because they insisted that no Ejectment lay for *Underwood*, which shews it must be of a different Nature from *Wood*; but that Objection was also disallowed; because the nature of *Underwood* is so well understood in

61

on Ejectment.

in the Law, so that the Sheriff will have Certainty enough to direct him in the Execution.

If an Ejectment be brought for an Acre of *Land*, and the Metes and Bounds are described on all sides in the Declaration, and the Jury find the Defendant *Guilty in half an Acre of the said Land*; This is a bad Verdict, because of the uncertainty of which Part or Moiety, the Plaintiff shall have Execution; but if it had been in an Action of Trespass only, the Verdict had been good, because the Damages only being to be recovered, a Trespass proved in any part of the *Acre* is sufficient.

An Ejectment lies for a *Coal-Mine*, because it is not to be considered as a bare Profit, a *Prender*, but a *Coal-Mine* comprehends the Ground or Soil itself, which may be delivered on the Execution; and though a Man may have a right to the *Mine*, without any Title to the *Soil*, yet the *Mine* itself being fixed in a certain Place, the Sheriff has a Thing certain before him to deliver Execution of.

An Ejectment was brought *de mineria carbon. in Gateside*, the Action was brought in the County Palatine of *Durham*, and the Plaintiff had Judgment, and on a Writ of Error Judgment was affirmed, though it was not said how many

Cro. Jac. 150. 161. 4 Mod. 143.

1 Mod. 143. 2 Sho. 364. Salk. 265.

A Compendious Treatise

many *Coal-Mines* in the Declaration; the reason seems to be because the word being in the plural Number, comprehends all the Mines in *Gateside*.

Cro. Car. But for a *Rent* or *common Appendant*,
 202. or other things that lie merely in grant,
Cro. Jac. no Ejectment lies; because these being in-
 146. corporeal Things, are in their Nature in-
Cro. Lit. 9. a visible, *qua neque tangi nec videri pos-
 sunt*; and therefore not in their Nature
 capable of being delivered in Execution;
 and for the same reason an Ejectment *de
 Piscaria* in such a River had been held
 ill; so an Ejectment *pro quodam rivulo
 sive aquae cursu*, called *D.* doth not lie,
 because it is impossible to give Execution
 of a Thing which is transient, and al-
 ways running.

Cro. Jac. But this Action hath been allowed
 150. for a *Boillary of Salt*, That is, as I
 understand the Case, where the Corpor-
 ration hath no inheritance in the Soil in
 which there is a Well of *Salt Water*,
 and the Lease or Grant to *A.* is of so ma-
 ny Buckets of the Water as will arise
 (which are called the Boillaries); if the
 Ejector refuses, and withholds the
 Buckets of Water from *A.* he may bring
 his Action in Ejectment for so many
 Boillaries as his Grant was, and they with-
 held from him. And this differs from
 the former Case; because in that the
 Thing demanded is transient and always
 running;

running; but here the Water is fixed in a certain Place within the bounds and compass of the Well, and is considered as part of the Soil, and therefore my Lord Coke says, That by a Grant of a *Boillary of Salt*, the Soil itself passes.

And hence it is that an Ejectment ^{Yelv. 143.} lies *pro stagno*, because in Law the Word ^{Co. Lit. 5.} *Stagnum* ^{Register.} comprehends both Land and ^{227.} Water;

so *de Gurgite*, was good for the same reason; but in the Case of the *aqua cursus* or River, if the Soil or Ground on which the Water runs belonged to the Plaintiff, he ought to have laid his Action for so many Acres of Land *aqua cooperit*, for when the running of the Water only belongs to him, and the Soil to another, then the remedy is by Action on the Case, for diverting his ^{Yelv. 143.} Water Course.

An Ejectment lies *pro prima tonsura*; That is as I understand the Book, If a Man hath the grant of the first Gras^s ^{Cro. Car.} that grows on the Land every Year, he ^{362.} ^{Ward. ver.} may recover it in Ejectment of him that ^{Petifer.} withholds it from him; for the first Gras^s, or *Prima tonsura*, is the best Profit and grant of the Property, and therefore he that hath it shall be esteemed the Proprietor of the Land itself, till the Contrary be proved; for the *after Gras* or *Feeding* is in the Nature of *Commonage*; as therefore he that hath the *first Gras*,

Grass, or *tonsurā*, has the most signal Profits of the Land, and may keep it longer or shorter on the Land, according to the seasonableness of the Year, it is but reasonable to give him this remedy against the Person that ousts him of it, especially when it is a fixed determinate Thing, which the Sheriff may put him in Possession of, which distinguishes it from a *Right of Common* or other Profit, *a prender*; for the Commoner cannot assign any one Acre which he hath a right to separate from the rest of the Commoners; whereas the Grantee of the *first Grass*, has in reality a right to the Land itself, till the Crop be taken off; for no Man can enter on the Land till that be off, without being a Trespasser.

Hard 303. So for the same reason an Ejectment *260.* lies, *pro Herbagio*, because the Herbage *401. 2.* is the most signal Profit of the Soil, and the Grantee hath at all times a right to enter and take it.

Leon. 212. But an Ejectment lies not *de Pandagio*, because this is only the Masts that falls from the Trees, which the Swine feed on, and not part of the Soil itself, as the *Herbage* is, and is no more than the Fruit which falls from the Trees, which the Swine have a right to feed on.

But an Ejectment lies, *pro pastura Centum Ovium*, That is for so much Land as will feed One hundred Sheep.

Though

Though the *Tythes* are esteemed Part ^{32 H. 8.} _{Cap. 7.} of the incorporeal Inheritance, and by the Common Law were only of *Ecclesiastical Conuance*, yet being in the hands of Lay-Proprietors, are by Act of Parliament considered as a Temporal Estate, every Lay Person having any Estate of Inheritance, Freehold right, Term, or Interest in *Tythes*, and being thereof disseized, ousted, wronged, or otherwise kept from the same, shall have his Remedy in the Courts of Law for them in like manner as for Lands; and hence came the Ejectment for *Tythes*.

But 1st, This Action is given only ^{Co. Lit.} to *Lay-Impropiators*; for the Act ¹⁵⁹ _{Dy. 116.} leaves the Spiritual Persons to purchase ^{Pl. 71.} their old Remedy in the Spiritual Court, the Words only extending to such *Tythes, Pensions, Oblations*, and other Spiritual and Ecclesiastical *Profits* as are made Temporal, or admitted to be, and abide in Temporal Hands or for *Lay-Uses*.

2^{dly}, The Ejectment is given for them against the Person, only Claiming or Pretending to have any Title thereto, and not against such Persons as refuse or deny to set out their *Tythes*; which as I understand, the Act is meant for Subtraction of Tythes, in which Case the Lay-Person is by the express Words of

*Vide the
Provisione of
the acts.* the Act, left to his Remedy in the Spiritual Court.

3dly, In this Action the Plaintiff must be as particular and certain in his demand of Them, as he would be of Land: and therefore an Ejectment *de omnibus et omnimodis decimis in decem Acris*, without saying *granorum et feni* was ill, as it would be for One hundred Acres of Land, without expressing the several natures and qualities of the Land.

11 Co. 256. But in this Action you are not obliged to set forth, the quantity of every sort of *Tythe*, as you must do of every sort of Land; because that is in its Nature certain, the quantity depending entirely on the Goodness and Fruitfulness of the Land and Seasons: And therefore, an Ejectment *pro quadam portione granorum & feni*, was good; because impossible to say how much the quantity would be.

4thly, Though an Ejectment lies of Tythes in Kind, yet it does not lie where Tything consists *in Modo decimandi*, for the Payment of an annual Sum, in satisfaction of Tythes, *vide Supra*.

Jones 321. The Plaintiff declared on a Lease for *Tythes*, belonging to the Rectory of D. in R. and that the Defendant entered upon him, and took such *Tythes*, sever'd for the nine Parts in R. without saying that they belong'd to the Rectory of D.

This

Cro. Car. 301.
reft. v.
Wood.

This was held Erroneous; because he hath not confined the Ouster to the *Tythes* laid in the Declaration; for the Defendant might have Ousted the Plaintiff of *Tythes* in R. which did not belong to the Rectory of D.—

But in an Ejectment for *Tythes*, you are not obliged to lay it for the *Rectory*, or *Chappel*, as well as for the *Tythes* belonging to it; because the Plaintiff may be ousted of the *Tythes*, and not of the whole *Rectory*, or *Chappel*; and therefore a Man is not obliged to sue for more than is withheld from Him.

There seems according to *Rolls*, one Circumstance, particular in the Ejectment for *Tythes*, and that is in the Time of laying the *Entry*, and *Ejectment*. And therefore *Rolls* says, That where the Declaration sets forth the Ejectment to have been in *May*, it was ill, because there was no *Tythes* to be ousted of, at that Season of the Year; but this seems not to be Law; because the Law does not judicially take Notice when the *Tythes* arise.

But at Common Law, an Ejectment lay *pro Rectoria*; because a Rectory consists of a *Church*, *Glebe Lands*, and *Tythes*; for Evidence of *Tythes* only, is not Evidence of a *Rectory*; and therefore it has been held, That where the Plaintiff in such Ejectment, could only

prove the Defendant took the *Tythes*, belonging to the Rectory, That was no evidence of the *Ejectment*, or *Ouster* of the Rectory.

<sup>1 Co. 25.
Sct. 101.
Doct. pla.
291.</sup> Formerly they held, That an *Ejectment* did not lie, *pro Capella*, because it was *res sacra*, which was not demisable; but now, since they are become *Lay-Inheritances*, they are recoverable in *Ejectment*, as other *Lay-Estates*; but it should be demanded by the Name of a *Messuage*, or it is not formal.

Secondly, Of the Demise, and Rights of Entry in the Lessor of the Plaintiff, and of the Ouster.

And here we may lay down the following Rules.

1st, That it must appear by the *Declaration*, That the Plaintiff had actually the Possession, and was ousted thereof by the Defendant; for the *Ejectment* is an Action of *Trespass* in its Nature, and is said to be done *vi et armis*; And therefore must be done to the Person himself complaining, and not to another Person who had the Plaintiff's Possession, though the Plaintiff's Title be affected by such *Ouster*; for it were an Impropriety to say, The Defendant *vi et armis*, Ejected the Plaintiff, when it appears by the Plaintiff's own shewing, That

That he had not actual Possession, but that it was at the Time of the *Ouster* in another. Hence it is, That if A, a Lessee for Years, makes a Lease to B, at Will, and B is ejected, A can't have this Action upon that Ouster; because though the Possession of B, was in Law the Possession of A, yet the *Trespass* *vi et armis*, which is complained of in this Action, must be against the actual Possession; and that was in B.

But it seems B, in this Case, though but a Tenant at Will, may make a Lease to punish the *Trespass* and *Ejectment*; because else there would be an Injury done, and no one allowed to punish it.

So if A. be a *Lessee for Years*, the *Remainder* to B, for Years, and A, is ejected, and then his Term expires, B ^{1 Rolls Rep. 3.} shall not have an *Ejectment* on the *Ouster*; because the Possession was not actually in him; and therefore he cannot complain of the *Trespass* done to another; besides the Rule obliges the Defendant to confess the actual *Entry* or *Possession* of the Plaintiff, which was only designed for Expedition, in the Trial of Right, for not giving the Plaintiff a Right of Action, which he had not at Law.

But an Executor may have this Action for an *Ejectment* done to the Testator;

A Compendious Treatise

4. L. 3. C. 6. tor; for though at *Common Law* they held, that Personal Wrongs died with the Person, yet when the *Statute* gave the Action for Goods taken out of the Possession of the Testator, it seems an equitable Construction on that Act to extend the Remedy to Terms for Years, and to punish the *Trespass* on that Sort of Property, especially since Leases for Years were looked upon as Goods and Chattels; 'twas the more reasonable to bring them all under the same Regulation.

Secondly, The second Rule is, That the Lessor of the Plaintiff must have a *Right of Entry* when this Action is brought: For if his Entry were taken away, he is a *Disseizer*, and cannot enter to make a Lease, to try the Title; Therefore shall not be allowed by an unlawful Act to prosecute his Right; and though the old Method in *Ejectment* required an *actual Entry*, and the modern Practice supposes it, and obliges the Defendant to confess *Lease*, *Entry*, and *Ouster* for the Ease of the Parties, and Expedition of the Tryal; yet this hath made no Alteration in the Law, nor was it ever intended to make the Plaintiff's Title better, or to give him a Right of Entry where he could not legally enter; For that were by a Rule of Court to oblige the Defendant to admit

admit a better Title in the Plaintiff than he really hath, which would be an Act of Injustice in the Court: Therefore where the *Tenant in Tail* makes a Discontinuance, the *Issue in Tail* is put to his *Formedon*, and cannot have his Ejectment, because his Entry by the Discontinuance is taken away.

And now by the Statute of *Limitations*, <sup>21 Ja. 1.
c. 16.</sup> none shall make an Entry into Lands but within twenty Years after their Right or Title, which shall first descend or accrue to the same; but this Act hath the usual Savings for *Infants*, *Fem. Coverts*, &c.

Therefore where there hath been no <sup>Feb.
681.</sup> Possession for twenty Years, such Length ^{Hard. 461.} of Possession is good Evidence against the Plaintiff in this Action, and the Plaintiff hath been *non-suited* on it.

But it seems the King is not affected by this Law, and this Privilege is derived to his Lessee, as where *A* has a Lease for ninety nine Years from the Crown, and *A* is out of Possession for above twenty Years, yet he may recover in an *Ejectment*, for *A* hath the King's Possession, and the King, &c. is privileged from *Non claim*; because *Nullum tempus occurrit Regi*: But if the Crown grants the Reversion, the Privilege doth not follow it, in the Hands of the *Grantee*.

A Compendious Treatise

Nor is a common Person affected with this Act, where the Possession is in the Hands of a Tenant paying Rent to his Landlord; for payment of Rent amounts to a Possession, within the Time of *Limitation*, and the Possession of any Lessee for Years is my own Possession; so that during the Continuance of the Lease and Payment of Rent, I am in no sort of Default; for I could not enter and take the actual Possession till the Lease expired, and it seems I should then, because my Right of Entry then first accrued.

Mod. 44.
F. d. v.
1. d. Grey.
Salk. 285.

The Possession of one *joint Tenant* is the Possession of the other, so as to prevent the Statute from being a Bar in the *Ejectment*; for each *joint Tenant*, hath a Right to the whole, and therefore the Entry and Possession of one is as good as that of both; so it is of Partners.

Hard. 176. *Uland. v.*
17. of Rich. *mond.*

If the King had *Judgment* in an Information of *Intrusion*, this does not hinder a third Person, a Stranger to the Suit, to enter, and bring his *Ejectment*. Because the King makes no Title by record of this Judgment, for no *Habere facias Seisinam* issues; because the Information does not suppose the King out of Possession, but the contrary, and that a Stranger intruded on him; and therefore on this Judgment an Injunction only goes to the Party, and all claiming

claiming under him, and therefore such Judgment cannot bind a Stranger so as to take away his Right of Entry to try his Title in *Ejectment*, because the King does not acquire any Title by that Record.

So if *A* be *out-lawed*, and Lands in his Possession be extended, this *Outlawry* and *Inquisition* does not take away the Entry of a third Person, who claims Title to the Lands extended, but leaves him his Remedy by *Ejectment* for Recovery thereof, because the King acquires no Title or Interest in the Land, but only to the Profits by the *Outlawry*; and then the Possession still residing in him, it were absurd to suffer his *Outlawry* to privilege it against the Entry of a third Person, whom he might have disseized of that Land; but an *Intruder* upon the King's Possession cannot either himself have an *Ejectment* or make a Lease to another, on which such Lessee can maintain his *Ejectment*; because no Man can recover in this Action that hath not the Possession, and a Right of Entry into it. The former is alledged in the Declaration, and must be proved by the Confession of *Entry*; and the Rule of Court is not so understood, as to make any Part of the Plaintiff's Title, or to better it; and as the King is not in Possession, but by matter of Record, so

Hard. 176.
Hamond's
Cafe.

neither

A Compendious Treatise

neither can he be turned out of Possession, but by matter of Record ; and consequently the *Intruder* is not understood in Law to gain any Possession by his *Intrusion*, and therefore cannot have this Action, in which the Possession is recovered.

2 Leo.
206.
Cro El.
331--2.

But where the Possession is not actually in the King, but in Lease to another, there if a Stranger enters on the Lessee, he gains the Possession without taking the Reversion out of the Crown, and may have his *Ejectment* to recover that Possession, if he be afterwards ousted : for there is a Possession in *pais* and not in the King ; that Possession is not privileged by the King's Prerogative : and hence it must follow, That the King's Lessee must have his *Ejectment* likewise to punish the Trespasser, and to recover the Possession which was taken out of him.

Cro. El.
800.
Nov. 33.

A covenanted to stand seized of Land, to the Value of 100*l.* per *Ann.* to the Use of himself for Life, and after to the Use of his Daughters who should be unmarried at the Time of his Death, till they severally should receive and levy 500*l.* a piece, the Remainder to his Son. *A* died the 30th of *Eliz.* and the eldest Son entered 42 *El.* the eldest Daughter (there being four of them) brought her *Ejectment*, but did not recover the Lands,

Lands, because her *Entry* was taken away, she having passed the Time allowed her to enter and receive the Profits, otherwise she might keep the other Daughters out of the Perception of the Profits. For if the eldest Daughter lets the Son enjoy during the Time the Profits may be levied, she lapses her time, and must therefore have Remedy against the Son who received the Profits in her Prejudice, and cannot charge the Land with her Portion which is then onerated with the Portions to be raised for the younger Sisters.

If a Rent be granted in Fee or otherwise to *A* with a *Clause* or *Provisee* in case it be in Arrear to enter and hold the Land, till the Arrears be satisfied out of the Profits thereof: If the Rent be in arrear, *A* may recover the Possession in an *Ejectment*: For this *Provisee* creates an Interest in the Land to answer the Rent, and regularly whoever hath an Interest, may demise the same to another, and consequently the Person claiming under such Demise, may maintain an Ejectment. And this is now a settled Point, where the *Rent* is created by Grant at *Common Law*, or by way of *use*; but in this Case there must be an actual *Entry* made, because the Title of the Land accrues by the Grantee's entering.

Thirdly,

A Compendious Treatise

Thirdly, A third Rule is, That tho' the Plaintiff by the new Method is not obliged to make an actual *Entry*, or a real *Lease*, yet he must lay the Commencement of the supposed Lease in his Declaration preceding the *Ouster*, and an *Ejectment* made by the Defendant, because the Wrong complained of by the Plaintiff is this; That the Defendant entered upon his Possession which he hath Title to by virtue of the Demise mentioned in the Declaration: And therefore if the *Ejectment* and *Ouster* should be laid before the Commencement of the Lease, (though such *Ouster* be wrong) yet the Plaintiff ought not to complain of it, because it was no Wrong to him, inasmuch as by his own shewing, it was done before his Title commenced.

Adv. 182. Thus where the Plaintiff declared on a Lease made the 27th of *April, Anno primo Regis*, and lays the *Ouster* by the Defendant to be the 26th of *April, Anno primo predict.* This was held bad, because it was plain the Plaintiff had no Title till the 27th, and therefore that *Ouster* the 26th was no Trespass or Injury to him.

1 Sid. 8. So if the Lease had been made 27
3 Mod. *198.* *Evans, v.* *April, habend. a dict. 27 April, virtute Croker.* *cujus*, the Plaintiff entered and was pos-
258, 647. *seised till the Defendant postea, eodem 69.* *Co. Ja. 96.* *27 die Aprilis, did eject him, This is bad,*
because

because the *Ejectment* was before the Plaintiff's Title commenced, for the Lease did not commence till 28 April. Cr. Jac.

But if the Lease be made the 27th, ^{258.} Cr. Jac. _{5 Co. r.} *habend.* from thence forth, there the Ejectment may be laid 27, because the Lease commences the 27th, and an Ejectment may be the same Day the Plaintiff's Title commences.

But the Law doth not necessarily oblige the Plaintiff expressly to mention the Day of the *Ouster*, so it appears to be after the Term commenced, and before the Action brought. For where the Declaration was on a Demise the 25th of *March, primo Regis*, for three Years, by virtue whereof the Plaintiff entered, and was possessed until the Defendant *postea, viz. Anno supra dict.* entered and ejected him without specifying the Day of the *Ejectment*: This was held good in Error, the Action being commenced *secundo Regis*, and the Ejectment laid to be *primo*; it was plain from the Declaration, the *Ouster* and *Ejectment* was after the Plaintiff's Title commenced, and before the Action brought, and confesses the Plaintiff had good Cause of Complaint, though he did not swear to the Day the Injury was done.

Neither is the Plaintiff, as it seems, ^{1 Rol.} necessarily obliged to alledge the parti- ^{Rep. 466.} cular

Wakely, v. cular Day of his *Entry* in the Declara-
Warren. tion; and therefore where the Plaintiff
declared on a Lease to commence at a
future Day, *virtute cuius*, he entered,
and was possessed till ejected by the De-
fendant. This was held good on a Writ
of Error, because it is said he entered by
virtue of the *Lease*, which could not be
before it commenced; for he could not
enter by virtue of the Lease till the Lease
commenced, *aliter*, if the Declaration
had been *prætextu cuius*, he entered, for
the Plaintiff might enter unlawfully, or
before his Time, under a Pretence of
the Lease.

C. Jac.
311.

The Plaintiff declares in *Ejectment* in
the *Common Pleas*, and after an Impar-
lance (as the Course of the Court is)
makes a second Declaration, if in such
Case the Plaintiff by the first Declaration
should lay the *Ejectment* and *Ouster*
before the Commencement of his Term,
or omit any Matter of Substance in the
first Declaration, though the second were
right, and the *Ouster* were laid after his
Term commenced, yet the Plaintiff shall
not recover, because the Declaration on
the *Imparlace-Roll* is the material one
on which the Action is grounded, and
must be supported by it, and the *Plea-
Roll* is but a Recital of the other, and
therefore ought to begin with an *Alias
prout patet, &c.*

And

And though the Declaration of all ^{2 Vent.} Terms in Law relates to the first Day of ^{174.} the Term, because the Term is in Law ^{1 Sid. 432.} considered as one Day, yet the Plaintiff <sup>Prodigie's
Case.</sup> may declare on a Lease made some time after the first Day of the Term, and shall recover thereon; but then it must appear to the Court, That the Declaration was filed after the Day of the Commencement of the supposed Lease, for otherwise the Plaintiff complains of an *Ejectment* before he had *Title*; and if the Time of filing a Bill were not examinable, the Act of Law which makes the Relation of Bills to the first Day of the Term would be an Act of Injury to the Plaintiff, and delay his Right; for then a Man ejected out of a Lease made in Term-time, could not complain till Term was over.

A Declaration on a Lease made the 6th of *May Anno 7°* of the King, &c. setting forth that the Plaintiff was possessed *quousque postea*, the Defendant 18th Day *ejusdem Mensis Anno sexto supradict.* ejected him: This was objected in Arrest of Judgment, because the *Ejectment*, as was insisted, was laid to be *Anno sexto*, which was a Year before the Commencement of the Lease, that being laid to begin the 6th of *May An. 7°*. But the Declaration was allowed to be good by the Court, because the *Eject-*

Ejectment was laid to be 18 *ejusdem* *mensis*, which could not be if it were done in the sixth Year, and therefore they rejected the word *sextō*, as inconsistent and void.

Cro. Jac.
662.
Rutter, v.
Mills.

So where the Declaration was of a Lease 22 *May habendum a primo die Maii* for three Years, *virtute cuius*; the Plaintiff entered and was possessed *quousque postea, viz. eodem die & Anno* the Defendant ejected him, This, on a Writ of Error, was allowed a good Declaration, though it was insisted, That *eodem die & Anno* must refer to the first Day of *May*, which was the last antecedent, and then the Ejectment was laid to be twenty one Days before the Lease was made, because the Lease being made the 22d, the Plaintiff entering *postea virtute cuius*, the Ejectment *eodem die & Anno* must refer to the Day the Lease was made, or else there could be no Ejectment of the Plaintiff: for by his own shewing, *he did not enter till after the Lease made, which was the 22d of May, and therefore in Matter of Right, where there doth not appear a direct Contradiction, the Judges follow the Reason of the thing, rather than adhere to a rigid Grammatical Construction of the Words of a Declaration, and thereby make the Proceedings inconsistent and void.*

The

The Plaintiff in Ejectment declared, That whereas *J S*, by Indenture, the 9th Day of June, (without saying when it was made or delivered) did demise, *&c. Habend. a die dat. sigillationis & deliberationis indenturæ predictæ. virtute cuius.* The Plaintiff entered and was possessed, till the Defendant the same Day ousted him.

It was moved in Arrest of Judgment, That it was uncertain by the Declaration when the Term began, neither the Day of the Date, nor of the Sealing and Delivery being mentioned in the Declaration; yet Judgment was given for the Plaintiff; because after a *Verdict* it shall be intended not only to bear date, but also to be sealed and delivered the Day mentioned in the Declaration, which was the 9th; for all Deeds are presumed to be delivered the Day that they bear date, till the contrary appear.

But where the Limitation of the *Lease* is altogether uncertain, the Plaintiff cannot recover; because where the Commencement of the Lease is uncertain, the Lease is void in itself, and then the Plaintiff cannot have a Title; besides that the Court cannot possibly perceive, whether the *Ejectment* was before or after the Plaintiff's Title accrued, if such uncertain Lease could give him one; otherwise it is where the Limitation or

A Compendious Treatise.

Commencement is impossible; for in such Case the Lease commences from the Delivery, as if it had no Date, and then the Court may judge whether the *Ejectment* is laid to be before or after the Commencement; but there is this further Reason for the Difference, for the impossible Limitation is rejected, because it could not be part of the Agreement or Contract; but an uncertain Limitation is part of the Contract, but vitiates the whole Agreement, because the Court cannot reduce it to any Certainty.

Thus where the Plaintiff declared on a Lease *habend. a die datus indenture predict.* without mentioning an Indenture before this was held bad, for the Uncertainty when the Lease commenced.

But if the Plaintiff had declared on a Demise to him *per quoddam scriptum obligat. habend. a die datus indent. predict.* this had been good; because the *Scriptum Obligatorium* shall be intended an Indenture.

The Plaintiff declared on a Lease of the fourth part of a House, in four parts to be divided, by force of which he entered in *tenementa predicta*, and was possessed till the Defendant ejected him *de tenementis predictis*. This was objected in Error, That the Plaintiff laid the *Ouster* to be of more than by his Lease he had a Title to; for the *Ouster* was

1 Vent.

137.

Taylor, v.

Fir-Gar-

rald.

2 Keb.

796.

was *de tenementis predictis*, which at least must be understood of the whole House, and the Lease was only of the fourth Part: but the Objection was overruled, because *de tenementis predictis* shall be intended only of the fourth part of which the Lease was made; besides it was but just he should recover as much as he had Title to, though he laid his Ejectment for more.

The Plaintiff declared on a Demise made the 16th Day of *January* by an Indenture dated the 2d Day of *January*, without saying *primo deliberat* the 16th. Yet the Declaration was held good: For though all Indentures shall be presumed to be delivered the Day they bare date, unless the contrary be shewn, and that therefore this Lease must commence the 2d Day of *January*, which if true, would be a different Lease from what the Plaintiff declared on; yet in regard he declared on a Demise the 16th it must necessarily be intended that it was delivered on the 16th; because it cannot possibly be a Demise before the Delivery, and therefore the Delivery must necessarily be intended the Day the Demise is said to have been made, and not the Day of the Date of the Indenture.

But where the Plaintiff does not make Mention of any particular Day when the Demise was made, but only in general says, That *J S*, by his Indenture bearing

266.

Hall, v.

Denbigh.

3 Lew.

A Compendious Treatise

Date 1 Jan. did demise to him, so that it doth not appear by the Plaintiff's own shewing when the Lease commenced ; the Law in such Cases construes the Delivery to have been the Day it bears date ; and so the Declaration was held to be good, and not void for the Uncertainty of the Commencement of the Lease, as was objected.

Though by the modern Practice the Plaintiff is not obliged to prove the *Lease* mentioned in the Declaration ; for that is confessed by the Rule, and by that Means the Mischief of any Variance between the Lease declared on, and the Lease produced, and proved on the Trial is avoided, which was a Danger the Plaintiff was exposed to, and often miscarried by the old Method of proceeding ; yet in the *Modern Practice* the Plaintiff must take care to declare on such a Lease as suits with his Lessee's Title ; and therefore if there be several Lessors, and you lay the Declaration *quod demiserunt*, you must shew in them such a Title that they might demise the Whole ; for the word *Demiserunt* must be taken in pleading according to the legal Sense it bears ; and therefore if any of the Lessors have not a legal Interest in the whole Premises, he cannot in Law be said to demise them, for it is only his Confirmation where he is not concerned in Interest,

Cro. Jac.
6¹³.
2 Keb.
376.

Interest, and therefore the Confession of this joint Lease doth not help, because you do not confess the Title by the Rule.

So where the Plaintiff declared on a Lease made by *A* and *B*, and it appears on the Trial that *A* was Tenant for life, Remainder to *B* in Fee ; this on a *Special Verdict* was adjudged against the Plaintiff, because it could not be the Lease both of *A* and *B*, to pass the Land *in presenti* to the Plaintiff ; for during the Life of *A* it could be his Lease only, because he was the Tenant in Possession ; and *B*'s joyning in the Lease amounted only to a Confirmation, but could pass no Interest during the Life of *A* ; and therefore the Allegation of the Plaintiff, That *A* and *B* did demise, was not proved.

If the Plaintiff declares on a Lease made by *A* and *B*, and on the Trial it appears that they are *Tenants in common*, the Plaintiff cannot recover ; but if *A* and *B* had been *joynt Tenants*, a joynt Lease to the Plaintiff had been good, and he might have declared *quod demise runt* ; and the Reason of the Difference is, That *Tenants in common* are of several Titles, and therefore the Freehold is several, and if they be disseized, they shall be put to their several Actions. As therefore the Lands of *Tenants in common* are to be considered as different Estates, depending upon different Titles,

⁶ Co. 14.

^{b.} 15. a.

Popl. 37.

Freeport's

Cafe.

Co. Lit. 42.

¹ Jones

^{305.}

² Jones,

^{137, 99.}

¹ Rol. Rep.

^{299.}

Ray. 142.

For in all
Pleadings
the Words
are to be
taken ac-
cording to
the legal
Accep-
tion.

the Plaintiff shall not recover ; because that were to allow the Plaintiff to try two several and different Titles in one Issue at the same time ; and therefore the Plaintiff, to make out his Title, must shew and prove that each demised the Whole to him, or else he doth not prove the Declaration, whereas the Discovery of the *Tenancy in Common* proves the contrary ; and as they have different Titles to a Moiety only, so they could not each of them demise the whole ; but *joyn* *Tenants* are seized *per my & per tout*, and they derive by one and the same Title, and therefore each may be said to demise the Whole ; and as they must joyn in an Action for any Violation of their Possession, so for the same Reason too their Lessee on their joyn Demise ; and *Copartners* seem to stand on the same Foundation and Reason, because both coming in as one Heir, the Possession must be joyn, as that of *Joint-Tenants*.

Gr. El.

615.

Moor, 682.
con.

In the Case of *Milliner and Robinson*, it was allowed a good Exception to the Declaration, That the Plaintiff declared that two Persons *demiserunt* : But to avoid any Difficulty in those Cases, the best way is for *Copartners*, *Joint-Tenants*, and *Tenants in Common*, to join in a Lease to a third Person, and that Lessee make a Lease to try the Title.

If

If the *Heir* brings an *Ejectment*, and Ray, 463: pending the Suit his *Ancestor* dies, yet he shall not recover, because every Man must recover according to the Right he had at the Time of the Action brought, but during the Life-time of the *Ancestor*, the *Ejectment* was done to him only, and therefore the *Ancestor* must punish the Injury: for one Man cannot complain in a Court of Justice of an Injury done to another.

A Lease made by a *Guardian* to try Hard. 330. the Title of an *Infant* seems good, for though such Lease may be voidable as to the *Infant*, yet a Stranger cannot defeat it; and if the Lessee should not be allowed to maintain his *Ejectment* on such Lease, the *Infancy* would deprive the Minor of that Remedy of punishing the Trespasser, which Persons of full Age are entitled to, which were to deny the Minor the common Right and Privilege of other Subjects.

A Man may bring an *Ejectment* on a ^{2 Co. 61.} joyn't Lease made by *Baron* and *Feme* ^{Cro. Jac.} of the Lands of the *Wife*, so the Lease ^{417, 617.} be made by herself in Person, whether it ^{470, 488.} be by *Parol* or *Indenture*; for the con- ^{Cro. El.} ^{332.} tracts of the *Wife* relating to her own Estate, are but voidable during the Co-verture, that she may have the Benefit of them after the Death of her *Husband*, if they shall be for her Interest to con-

A Compendious Treatise

firm them, and the *Husband* ought to join in the Lease, because they are considered in the Law but as one Person; and he having, during the Coverture, an Interest in the Property of his Wife, the whole Proprietor would not join in the Lease unless the *Husband* joined with her; and on such Joint-Lease each

Cro. Jac.
617.

may be said to demise the whole, and the Lessee may maintain his Ejectment on such Demise, because during the Coverture he hath the Power of her Property, and therefore all his Contracts relating to it are good during his Life, because his Pleasure must determine her who hath resigned her Will to him, but after his Death she may avoid the Lease.

Cro. Jac.
617.
Gardiner,
v. Nor-
man.

But if the Plaintiff declares on a Joint-Lease by *Baron* and *Feme*, and the Lease appears on the Evidence to have been executed by a *third Person*, by virtue of a *Letter of Attorney* from the *Husband* and *Wife*, such Evidence will not maintain the Declaration, because she cannot delegate a Power to a third Person to act for her who hath already devolved all Power and Authority on her *Husband*, and therefore the *Letter of Attorney* being void as to the *Wife*, it must remain as to the *Husband* only; and hence it hath been held, That the Lessee might in this Case declare on that Lease as the Lease of the *Husband* only.

A

A *Copyholder* may declare upon a Lease for any Number of Years without Forfeiture.

That Lessee of a *Copyholder* for a ^{4 Co. 26.} Year may have an *Ejectment* there is no question ; for his Estate is warranted by the Law of the Land, and it is the most speedy way for him to recover the Possession.

The Plea and general Issue.

The *General Rule* in the *Issue* in this ^{21 Ja. 1.} _{c. 16.} Action is, Whatsoever bars the Right of Entry, is a Bar to the Plaintiff's Title, therefore the Plaintiff must prove Seisin within twenty Years in himself or his Ancestors, or you must prove a Deed or Seisin in the Person that has a particular Estate in the Land, and that you claimed within twenty Years after the Reversion accrued, or that you was an *Infant*, *Feme- covert*, *Non-compos*, *Imprisoned*, or *beyond the Sea*, at the Time when the Title accrued, and that you claimed within twenty Years after you came of Age, &c.

A *Fine* and *Non-claim*, or a *Descent- cast*, which takes away the Entry, are good Pleas in this Action, in Bar of the Plaintiff's Right of Entry.

By 32 H. 8. c. 33. if a *Diffeisor* dies ^{Co. Lit.} within five Years after the *Diffeisin* ²³⁸⁴ done,

A Compendious Treatise

done, and the Lands descend to his Heir, such Descent shall not take away the Entry of the *Diffeisee*, though no Claim had been made on the part of the *Diffeisee*; but if there had been five Years quiet Possession in the *Diffeisor*, *continual Claim* had become as necessary as before the Statute; *Abaters* and *Intruders* are not within the Statute of 32 H. 8. for it being a penal Statute, they extended it to Cases where there was an actual Ouster of the Tenant, which is a Consequence of all *Diffeisins*, be they done with or without Violence, but an *Abator* or *Intruder* ousted no one, therefore they remain as at common Law: But *Diffeisors* and their Heirs are within the express Meaning and Intent of the Statute, which gives the Remedy to the *Diffeisee*; and where the Preamble of the Statute mentions only *Diffeisins* with Force, and the Body of the Statute *Diffeisins* generally, they extend it to all, as being within the same Mischief.

Dy. 219.
Co. Lit.
238 a.

The *Feoffee* of the *Diffeisor* is not within the Statute, because he has not ousted any one; therefore if such *Feoffee* dies, and the Land descends to his Heir, this Descent shall take away the Entry of the *Diffeisee* or his Heirs.

Badies

Bodies Politick and Corporate are within the Statute 32 H. 8. so you hold yourself in a *Diffeisin*.

If there be *Tenant for Life*, the *Reversion in Fee*, and *Tenant for Life* be disfeized and dies, and the *Diffeisor* dies within five Years, the *Reversion* is within the Benefit of the Statute, and his *Entry* is not taken away; for after the Death of *Tenant for Life*, it is a Continuation of the same *Diffeisin* to the *Reversioner*; but if the *Diffeisor* had died seized, and then the *Tenant for Life* had died, there the Descent would have taken away the *Entry* of the *Reversioner*, because there was no Continuation of the same *Diffeisin* upon the *Reversioner*; the Act only continues a Right of *Entry* where a Right of *Entry* was once in him; but here no Right of *Entry* was in the *Reversioner*, nor could he have an *Affize*, nor Writ of *Entry* in the first Degree; and he never having had the Right of Possession, is not a *Diffeisee* within the Statute to punish this as an *actual Ouster*, since it was no *actual Ouster* of the *Reversioner* by the Heir of the *Diffeisor* or his *Ancestor*.

Accord is a good *Plea* in *Ejectment*. ^{9 Co. 77.}
Ancient Demesne is likewise a good *Plea* ^{8 Petoe's Case, and}
 in *Ejectment*, ^{ibid.}

Of the Verdict, Judgment, and Execution.

There needs little to be said in this Place of the Verdict, in this Action; but as the *Verdict* is the Ground of the Judgment, it ought not to be entered for more Land or different Parcels than the Defendant was found guilty of by the *Verdict*, but a Variance between the *Verdict* and *Judgment*, occasioned by the Misprision or Default of the Clerk in entering the Judgment, is not fatal, but hath been amended by the Court after a Writ of Error brought, as where the Plaintiff had Judgment. *Quod recuperet terminum*, of a Messuage and ten Acres of Land, and the Verdict acquitted the Defendant *Quoad* the Land; here the *Judgment* was larger than the *Verdict*: Because it appeared to be the Misprision of the Clerk, who had not pursued the *Verdict*, which ought to have been his Guide in making up the *Judgment*, and no Mistake in point of Law, in giving the *Judgment*; therefore the Party ought not to suffer for his Misprision, since the Statute of 8 H. 6. c. 12. which gives the Judges in Affirmance of their Judgment Power to amend and reform what in their Discretion seems to be the Misprision of the Clerks.

The

Cro. Jac.
63rd.
Mason, v.
Fox, 8 H. 6.
c. 12.

The *Judgment in Ejectment* may be considered either where the Plaintiff hath a *Verdict* for part only of the Things demanded by the Action, or, *secondly*, where there are several Defendants or Plaintiffs and one dies, or one only is found guilty.

First, Where the Plaintiff hath a *Verdict* for part only.

If the Plaintiff hath a *Verdict* for all, Judgment
21. see the
form N.B.
220. H. and the Entry of the Judgment is, That the Plaintiff *recuperet terminum versus* *Def' de & in tenementis predict' &* *quod Def' capiatur*. The first Judgment of this kind seems to have been about 14 *Hen. 7.* for originally the Plaintiff recovered only Damages in this Action; for Terms for Years were so entirely at Common Law in the power of the Freeholder, that they were generally very short, and often expired before the Suit determined: But about the Reign of King *Hen. VII.* Terms began to swell to a great Length, which necessarily and in reason ought to alter the Judgment for the Remedy, and not been commensurate to the Injury, if the Plaintiff could only have recovered Damages, when he had made out Title to a long Term, which upon the Face of the Record must appear to the Court to be subsisting; and

A Compendious Treatise

and hence the Judgment was *Quod recuperet terminum.*

But if the Judgment in Ejectment be entered *Quod recuperet Possessionem termini predicti*, this is as well as if it had been *recuperet terminum predictum*, because both signify the same thing, and the Possession itself is to be recovered, and therefore agreeable to the *Habere facias Possessionem*.

Savil 28. And hence it is, that if the *Term* expires pending the Suit, that the Plaintiff can't recover the Possession, because the Court can't give the Plaintiff Judgment for the Land when it appears upon the face of the Record that his Title to it is determined: yet he shall have his Judgment for Damages, because the Trespass still remain'd.

Judgment
72. 3. *see*
the former. If the Plaintiff hath a Verdict only for part, as for example where he declares of an Ejectment in *D.* and *L.* and the Judgment is *quod recuperet terminum, et quod Defend. Capiat.* and then the Plaintiff is *in Misericord. pro falso clamore*, against the Defendant, for that whereof the Jury acquitted the Defendant *et Def. eat inde sine die*; and where he is found Guilty, the Entry is *quod Def. Cap.* Because the Ejectment is a Trespass *vi et armis*, which is a Breach of the Peace, and he that is found guilty of it is to pay a Fine to the King, for which

Mod.

285 Lind.

sy v. Sir

Thomas

Clerk.

at

At Common Law a *Capias pro fine* issued; ^{Sty.}
 this Process was misused by the Officers, ^{122 35d}
 Cro. Car. who after outlawed the Defendant there- ^{407.}
 on unless he Compounded for the *Fine*,
 which was uncertain in it's Nature, and
 the Crown had no benefit by the *Fines*,
 because they never *Estreated* 'em into
 the Exchequer. To prevent these Abuses, ^{5 and 6}
 this Process is now taken away, and ^{W. and M.}
 the Plaintiff is to pay the Officer in lieu ^{c. 12 in}
 of the *Fine*, the Sum of *Six Shillings* ^{Quare if in}
^{and eight-Pence}, which is to be allowed ^{force in}
 the Plaintiff in his Costs: It should there- ^{Ireland}
 fore seem that this part of the Judgment ^{Carth. 309}
quod Def. capiatur, should since that
 Statute be omitted. *Quere.*

In Ejectment against *Baron and Feme*, ^{Cro. Car.}
 the *Husband* was acquitted and the *Wife* ^{406 Mayo.}
 found Guilty, the Judgment was *quod Coghill*
Capiantur, and held good, because that
 is only for the *Fine*, which the Husband
 must pay for the *Wife* cannot.

Quod Quer. sit in Misericordia pro. ^{Cro. Car.}
 &c. is not peculiar to this Action, and ^{178 Deck-}
 therefore need not here be insisted on, ^{row v.}
 Jenkins, because it is at large explained in another
 Place; but it may here be mentioned,
 That if the Plaintiff in Ejectment de-
 clares against three of several Parcels, and
 one is acquitted of all, and the other
 two of part, and found guilty of the
 Residue, it need not be twice entered
 that the Plaintiff in *Misericordia pro* &c. ^{against}

against the Person acquitted of all, and in *Misericordia pro*, &c. against the other two who were acquitted of Part, but it is sufficient to say, That the Plaintiff *sit in Misericordia quoad* all the Defendants which upon the face of the Judgment may well enough be distinguished *Reddendo Singula Singulis*.

If the Defendant be acquitted of Part, and Judgment be entered *Quod Def. sit quietus quoad*, that part whereof he is acquitted, this is Error, because the Judgment in this Action is not final, as in the Writs of Right; and the Judgment in this Action doth not protect the Defendant from any further Suit, but only quits him against the Title, set up by the Plaintiff in that Action; but since it appears, that the Plaintiff's Demand was groundless as to that Part whereof the Defendant was acquitted, the Judgment as to that Part is, with great Propriety set down to be *Quod Def. eat inde sine die*, the Plaintiff as to that having no farther Cause to detain him longer in Court; but if one of the Defendants die, after a Verdict, as hereafter shall be shewn, the Plaintiff shall have Judgment against the Survivors on his suggesting the Death of one, but then the Judgment must be, that the Survivors *Capiantur*, and as to the Person deceased *Quod Quer. nil Capiat*, &c.

Cro. Eliz.
763

In

In the Case of *Lindsey* and Sir *John Clerk*, the Plaintiff had a Verdict in *Ejectment* upon an Original in *B. R.* whereupon a Writ of Error was brought ^{Cartew.} in Parliament; and now to prevent Err. 390. ror, it was moved to have the opinion of the Judges upon the fifth and sixth of *William and Mary*, which takes away the *Capias pro fine* in cases of this Nature. Whether since that Statute any *Judgment quod defendens capiatur*, ought to be enter'd on Record in Judgments on Actions *vi et armis &c.* or whether any other special Entry ought to be made in lieu thereof, taking notice of that Statute.

And after debate it was held *per Curiam*, that this new Statute having taken away the Fine no Judgment of *Capiatur* shall be enter'd against the Defendant, nor any thing in lieu thereof, but the Clause shall be totally left out of the Judgment.

Secondly, *Where there are several Defendants or Plaintiffs, and one dies, both the Judgment is to be taken and enter'd.* Moor, 469. Cro. Car. 513, 14.

If there be several Defendants, and one dies after Issue joined, and before Verdict or after Verdict, and before Judgment the Plaintiff may proceed against the Survivors, but then he ought to suggest the Death of the Defendant on the Roll;

H for

for if without such Suggestion, the Plaintiff proceeds to Tryal or obtains Judgment against all the Defendants, 'tis Error, because there can be no Verdict or Judgment against a Person not in being: This is to be understood where several Defendants take the joint Defence for the whole Land demanded; for there they have a joint Title, and consequently the Death of one shall not abate the Action, because the whole Interest comes by Survivorship to the others, and then the Plaintiff hath still Persons before the Court to defend the whole, and may upon the Suggestion of the Death of one of the Defendants proceed against the rest: But where the Declaration against the Casual Ejector is for several Parcels, and these appertain to several Defendants, and each takes a Defence for part only, there upon the Death of one of them, the Plaintiff cannot proceed against the Survivors for all the Land demanded in his Declaration; for upon the Defendants appearing, each for a part only, there are new Declarations delivered against each of them, *quoad* his Part only; and these new Declarations make them in the Nature of distinct Defendants, and consequently also that Part which was defended by the Person deceased, there is no Person in Court, against whom Judgment can be given, or Execution taken out.

So

So it is where there are several Plaintiffs, and one dies before Verdict, or Judgment, the Survivors may proceed, because, where several declare in one Lease, it appears on the face of the Declaration, that they have a joint Interest, which on the Death of one must survive, and therefore the Survivors having the whole Interest in them, may proceed for the recovery thereof. We may add to this, that an *Ejectment* being an Action of *Trespass*, if several commit a *Trespass*, and one dies, there can be no reason wherefore the rest should become punishable for the *Trespass*; and therefore they may be proceeded against: So where an *Ouster*, which is a *Trespass*, is committed on the joint Possession of several, and one dies, as the joint Interest survives, it is just and reasonable that the Survivors should punish the Injury which was done to the Possession; and therefore Surviving Plaintiffs are allowed to proceed.

But if one of the *Joint Defendants* Cro. Cat. die after issue joined, and before Verdict, 5¹⁴ Jones, a- 401. and the Plaintiff proceeds to Tryal against all, and afterwards suggests, that one of the Defendants died after the Verdict, which the other Defendants admit to be true, on which the Plaintiff hath *Judgment* against the Survivors; whereas in Truth, the Defendant died before

A Compendious Treatise.

Tryal, and after a Writ of Error be brought the Court it seems cannot Correct this after *Judgment* given, because the *Judgment*, as it is given, must stand, the Court having no Power over it, at least after the Term in which it is given; and in the *Exchequer* they doubted if the Error, (if such there were,) could be tried there because the Statute of *Nisi prius* did not extend to that Court which was newly created.

¹ Rol. Rep. 14. Cro. Jac. 356. If an *Ejectment* be brought against *Baron and Feme*, and the Plaintiff hath a *Verdict* against both, and before *Judgment* the Husband dies, the Plaintiff may on the Suggestion have *Judgment* against the Wife, not only because this is a *Trespass* committed by the Wife, and that therefore she is punishable for her own *Act*, which is injurious to another, but because, where the Wife is found guilty of the *Ejectment*, she must have obtained that unlawful Possession either jointly with her Husband, and then it Survives, or else she had the whole Possession in her own right; and in either case the Plaintiff may punish her, and recover the Possession, which is wholly in her on the death of her Husband.

¹ Rol. ab. 768. But where there is but one Plaintiff in *Ejectment*, and after *Verdict* on a Trial at Bar, but before *Judgment* given,

given, the Plaintiff *dies*, yet the Court may proceed to give Judgment for the Plaintiff tho' he be dead, because both Judgment and Verdict being both in one, and the same Term, relate to the first day of the Term at which time the Plaintiff was alive.

But if the Tryal had been by *Nisi prius*, and the Plaintiff had died after Verdict and before the day in Banc. no Judgment can be given, because the *Postea* comes in as of the Term subsequent to the death of the Plaintiff, and the Judgment that is entered thereupon can by no relation precede the death of the Plaintiff, and consequently the Judgment whether given for, or against him, must be erroneous.

However, tho' the death of the Defendant abates the Action, yet in regard to the *Lessor* of the Plaintiff is looked upon by the Court to be chiefly concerned in Interest, if there be any Man of the same Name with the Plaintiff, the Court will take him to be the Man, and in such Case not suffer the Action to abate, because the Lease was made to the Plaintiff only to try the Title.

A Compendious Treatise

Of the Writ of Execution.

WHEN the Judgment of the Court in *Ejectment* prevailed to recover the Term itself, which was originally only for Damages, it became like the *Habere fac. Seisinam* in real Actions where the Freehold was recovered, to have the *Habere fac. Possessionem* in this Action, the Possession only being recorded in *Ejectment*, as the Freehold was in real Actions. In the Writ of Execution is considered,

First, *The Time when the Writ is to be sued.*

Secondly, *How the Writ is to be Executed.*

Thirdly, *How the Plaintiff is to be quieted, and what Relief he has when his Possession is disturbed after Execution Executed,*

At the Common Law, if the Plaintiff, after he had obtained *Judgment* in any personal Action, had lain quiet, and had taken no Process of *Execution* within the Year, he was put to a new Original upon his Judgment, as in an Action of *Debt*, *Writ of Annuity*, or other personal Action, wherein *Debt* or *Damages* were recovered; but in real Actions where Land was recovered, the Demandant after the Year, might take out a *Scire Facias* to

to revive his Judgment; and the reason of the difference seems to be, because the Judgment being particular in the real Action, *quoad* the Lands with a certain Description, the Law required that the Execution of that Judgment should be entered upon the Roll, that it might be seen whether Execution was delivered of the same Thing of which Judgment was given; and therefore if there was no Execution appearing on the Roll, a *Scire Facias* issued to shew Cause why Execution should not be; but where the Action was personal, no *Scire Facias* was issuable by Law on the Judgment, because there was not a Judgment for any particular thing in the personal Action with which the Execution could be compared; therefore after a reasonable Time which was a Year and a Day, it was presumed to be executed, and therefore the Law allowed him no *Scire Facias* to shew Cause why there should not be Execution; but if the Party had slipt his time, he was put to his Action on the Judgment, and the Defendant was obliged to shew, how that Debt, of which the Judgment was an evidence, was discharged. To Remedy this, and make the Forms of Proceeding more uniform in both Actions, the Stat. of West. 2. gave the *Scire Facias* to the Plaintiff to revive the Judgment, where ^{c. 45.}

A Compendious Treatise

he had omitted to sue Execution within the Year after Judgment was obtained ; the Words of the Act are, *Quod ea quæ inveniuntur irrotulata coram eis qui Record' habent sive Servitia aut consuetudines recognitæ, aut alia quæcunque irrotulata, si recens sit cognitio, viz. infra annum statim habeat conquerens illius recognitionis, & si forte a majore tempore transactio facta fuerit aut illa cognitio, præcipiatur vic. quod Scire Faciat, &c.* But it had been doubted, on these Words, whether a *Scire Facias* lay to revive a Judgment in Ejectment for the Land, not only because the Term or Possession was not at the making of this Act recoverable in the Action, and therefore the Act could not be supposed to provide for it ; but also, because the Words of the Act seem to confine the *Scire Facias* to those Judgments, where only Debt or Damages were recovered, Upon these Reasons I take the Resolution in *Siderf.* to be grounded, because though upon a Judgment in Ejectment, there shall go a *Scire Facias* after the Year for the Damages, yet says the Book, it is not absolutely necessary that there should be a *Scire Facias* as to the Land ; the Practice however seems to have prevailed otherwise at this Day, and there seems to be a Reason for the Practice, for the Words of the Act are,

Sive

1 Sid.

351.

Okey

v. Vicars.

Sive servitia sive consuetudines, sive alia quæcunque irrorulata, which should comprehend all Judgments, and give the like Remedy on them by *Scire Facias*, as the the Demandant had on a Judgment in a ^{1. Salk.} real Action at Common Law; and therefore if the Plaintiff in Ejectment, after the Year, takes out an Execution without the *Scire Facias*, the Court will award ^{Lilly's Reg.} a Writ of *Restitution quia erronice em- 278.* *navit.*

Now the Reason why the Plaintiff <sup>Withers's
Cafe.</sup> is put to his *Scire Facias* after the Year, is because where he lies quiet so long after his Judgment, it shall be presumed he hath released the Execution, and upon that the Defendant shall not be disturbed in his Possession without being called upon, and having an opportunity in Court of Pleading the Release, or shewing Cause, if he can, why the Execution should not go; this is the general Rule, but it is to be understood with this Restriction,

That if the Plaintiff hath a Judgment, ^{Mod. Caf.} ^{288.} with stay of Execution for a Year, he ^{1. Roll.} may after the Year take out his Execution ^{Rep. 104.} without the *Scire Facias*, because the delay is by consent of Parties, and in favour of the Defendant, and the Indulgence of the Plaintiff shall not turn to his Prejudice, nor ought the Defendant to be allowed any advantage of it when it appears

appears to be done for his Advantage and at his Instance.

1 Keb. 785. But it seems this delay of *Execution*,
Lovelace, being only the Compromise or Agreement
Chapman. of the Parties, is never entered on the
Mod. Cases. Roll, and therefore after the Year the
287. Plaintiff ought to move the Court for the *Scire Facias*, least the Execution should be suspended, *quia Erronice emanavit*, after the Year, without the *Scire Facias*.

5 Co. 88. So if the Defendant brings a Writ of
Cro. El. *Error*, and thereby hinders the Plaintiff
46. from taking his *Execution* within the
Mod. Cases. 288. 2 Inst. 471. Year, and the Plaintiff in Error is Non-
suit, or the Judgment affirmed, the Defendant in *Error* may proceed to *Execution* after the Year without a *Scire Facias*, because the Writ of Error was a *Supersedeas* to the Execution; and the Plaintiff must acquiesce till he hears the Judgment above; besides, while the Cause is depending on the Writ of Error, the Cause is still *Sub Judice*, whether the Plaintiff shall recover the Land or not, and the Year for the Execution ought to be accounted from the final Judgment given.

Mod. Cases 288. But if the Defendant had been tied up by an *Injunction* out of Chancery for a Year, he could take out an Execution after the Year without a *Scire Facias*, because the Courts of Law don't take notice

notice of Chancery *Injunctions*, as they do of Writs of *Error*; besides, in that case it had been no breach of the *Injunction*, to have taken out the *Execution* within the Year, and continued it down by *Vic. non misit breve*, which it seems cannot be done in the case of the Writ of *Error*, because that removes the Record out of Court where the Judgment was, and therefore there can be no *Proceedings* below till it be affirmed and returned to the inferior Courts. To a *Scire Facias*, to have Execution for Land and Damages, the Defendant pleads an Entry into the Land after Judgment, and before the *Scire Facias* issued; this was held an ill Plea, because the Defendant did not answer to the Damages as well as to the Land, which were both comprised in the *Scire Facias*, and therefore, the Plaintiff had Judgment to take the Writ of *Execution* for both Land and Damages, because if he does not defend the Whole, there must be an Execution according to the Judgment remaining on Record, and therefore it seems not like a Debt in *pais*, where if a Man *pleads* to part only, the Plaintiff must take *Judgment* as to the Relidue, otherwise it will work a *discontinuance*. Cro. El. 230.

Secondly,

Secondly, *How the Writ is to be Executed.*

^{5 Co. 91. 6.} The Words of the Writ are, *Quod babere facias possessionem*, so that there must be a full and actual Possession given by the Sheriff, and consequently all Power necessary for this End must be given him, and therefore if the Recovery be of a House, the Sheriff may justify breaking open the Door, if he be denied entrance by the Tenant, because the Writ cannot be otherwise executed.

^{1 Rol. ab 186.} If the Plaintiff recovers several Messuages in the possession of different Persons, the Sheriff must go to each House, and deliver the Possession thereof; and this is done by turning the Tenants out of each of the Houses; for the Delivery of the Possession of one Messuage in the Name of all is not a good Execution of the Writ, because the Possession of one Tenant is not the Possession of the other, but each hath his several Possession.

^{1 Rol. ab 886.} But it seems by *Rolls*, that if all the Messuages had been in possession of one Tenant, it had been sufficient to give Possession of one in the Name of all; but without doubt the furest and best way is for the Sheriff to remove all the Tenants entirely out of each House, and when the

the Possession is quitted, to deliver it to the Plaintiff.

If the Sheriff thrusts out all Persons he can find in the House, and gives the Plaintiff, as he thinks, quiet Possession, and after the Sheriff is gone there appears some Persons to be lurking in the House, this is no good Execution, and therefore the Plaintiff shall have a new *Habere facias*, because he never had Execution.

Where the Recovery is of Land, and there was more demanded than recovered, as suppose the Demand had been for five hundred Acres, and a Verdict and Judgment only for an hundred Acres, it seems doubtful how the Sheriff is to give Execution.

Rolls says, 'tis sufficient to give the Plaintiff possession of two or three Acres in the Name of the whole; and this indeed seems the safest way for the Sheriff, because he does at his peril execute the Writ; and if he gives possession of any Land not recovered, and not in the *Habere facias possessionem*, he is a Trespasser, and shall be punished in an Action of *Trespass*: But in regard the *Habere facias* is to give the Plaintiff the Benefit of his Judgment, and that cannot be done without an actual Possession be given of the whole Quantity, it hath been held by others, that the Sheriff &c. Inst. does not discharge his Duty by giving one

^{1 Leo. 145.}
^{Upton vid.}
Wells.

^{1 Rol. ab}
886.

^{Palm. 289.}

one Acre in the name of all, but he ought in such case to set forth all the Acres in particular, for to have it otherwise would be to leave the *Execution* uncertain, and consequently not to give the Plaintiff the full Benefit and Advantage of his Judgment; at this day, the Practice is, for the Plaintiff to give the Sheriff Security to indemnify him from the Defendant, and then the Sheriff to give Execution of what the Plaintiff demands.

¹ *Rol. rep.* ^{420.} If the Execution goes to the Sheriff for twenty Acres, it seems the Sheriff must give twenty Acres according to the common Estimation of the County where the Lands lye.

Thirdly, *How the Plaintiff is to be quieted, and what Relief he has when his Possession is disturbed after Execution Executed.*

¹ *Rol. ab*
836.

² *Keb. 245.*

Devreux.
v. Under-
hill.

² *Pal. 289.*

¹ *Rol. Rep.*

353.

Mod. Cases

^{27.}

² *Brownl.*

253.

Cralop's
Cafe.

And here it is farther observable, that this Writ of Execution is only returnable at the Election of the Plaintiff; and the Court, at the instance of the Defendant, will not direct the Writ to be returned. This seems to be left to the choice of the Plaintiff, that he may do what is most for his Advantage, in order to have the full Benefit of his Judgment; and the way to that is, to suffer

suffer him to renew the Execution at his pleasure 'till a full Execution be had; but the Plaintiff cannot renew Execution after one *Habere Facias* is returned and filed, because it then appears on Record, that the Plaintiff hath had the Benefit of his Suit, and then the new Execution is but *actum agere*, and consequently superfluous; and therefore the Court will not oblige the Sheriff to make any Return but at the Desire of the Plaintiff.

If the Writ be returned by the Sheriff, ^{2 Brownl.} though not filed, it seems no new *Habere facias* shall issue, because when the Return is made, it becomes a Record, which the Court then becomes entitled to.

But where the Writ is neither returned nor filed, there is then no Act of Record by which it appears to the Court that the Plaintiff hath had any Benefit by his *Judgment*, and there, upon a Suggestion that *Vic. non misit breve*, the Plaintiff is entitled to a new Writ, because the Omission of the Officer shall not turn to the Plaintiff's Delay or Prejudice; but the new Writ cannot issue 'till the Return of the first Writ be out, because 'till the Return be past, *non confat* to the Court; but the Sheriff may do his Duty, and the Plaintiff thereby have the full Benefit of his Judge-

A Compendious Treatise

Judgment, and then there can be no occasion for a new *Habere facias*.

Mod. Cases If the Officer be disturbed in the Execution of the Writ, on an Affidavit the Court will grant an *Attachment* against the Party, whether he be the Defendant or a Stranger; because the Writ is the Process of the Court, and any Disturbance given to the Execution of it is a Contempt to the Authority of the Court from whence it issues, and as such, will be punished by the Court. The Process is not understood to be executed, nor the Execution compleat, 'till the Sheriff and his Officers be gone, and the Plaintiff left in quiet possession.

¹Keb.479. But after the Possession given either to the *Habere facias*, or the Agreement of the Parties, the Law seems to make a Difference, where the Plaintiff is turned out of Possession by the Defendant, and where by a Stranger, when it is done by the Defendant himself, the Plaintiff may have either a new *Habere facias* or an *Attachment*; because the Defendant himself shall never by his own Act keep possession which the Plaintiff received from him by due course of Law: But where a Stranger turns the Plaintiff out of possession after the Execution fully executed, the Plaintiff is put to his new Action, upon an Indictment of forcible Entry, where the Force will be punished

¹Keb.479.
Ratcliff, v.
Tate.

nished, because the Title was never tried between the Plaintiff and the Stranger; and he may claim the Land by Title paramount the Plaintiff, or he may come in under him, and then the Recovery and Execution in the former Action ought not to hinder the Stranger from keeping that Possession which he may have a right to; and if the Law were otherwise, the Plaintiff might by virtue of a new *Habere facias* turn out even his own Tenants, who come in after the Execution executed; whereas the Possession was given him only against the Defendant in the Action, and not against others not parties to the Suit.

Thus in the Case of *Fortune* and *Stiles, 318r* *Johnson*, the Court was moved for an *Attachment* against *Johnson* for ejecting one who had been put in possession by an *Habere facias*; but because it appeared that *Johnson* claimed under an elder Judgment, the Court would not make any Rule in it, because it was Title against Title; and therefore left them to take their course at Law.

The Plaintiff had Judgment in Ejectment, and by Agreement afterwards, the Defendant was to hold the Land for the residue of his Term, and held it accordingly for some time, and then the Plaintiff took an *Habere facias* and executes it, the Defendant moved the Court for

Restitution on the Agreement, but the Court would not grant it, but left the Defendant to his Action on the case on the Agreement, for the Judgment was entered absolutely: But if the Judgment had been entered with a *Cesset Executio* for such a time, there if the Plaintiff takes Execution within the Time, the Defendant shall have Restitution, because the Judgment was entered with this Limitation, that the Plaintiff should not have the Fruit of it 'till such a Time. But *Quære* how this appears to the Court, since it seems the *Cesset Executio* is not entered on the Roll. The Difference seems to be between a Judgment by Confession and a Judgment on Verdict, where the former is given with a *Cesset Executio*. If the Execution be afterwards taken contrary to the Agreement, the Court will set it aside, and lay the Attorney by the Heels; but where Judgment is given on Verdict, there the Verdict is the foot and ground of the Judgment, and the Court will take no notice of the subsequent Agreement of the Parties, but leave them to their Remedy.

Of a Quare ejicit infra Terminum.

The Writ, *Quare ejicit infra terminum*, lieth, where a Man leases Lands to another for Years, and after he entereth and maketh a Feoffment in fee of the same Lands, to a Stranger, or for Life, the Lessee shall have that Writ *Quare, &c.* against the Feoffee or Lessee for Life.

And in this Writ he shall recover his *Term* again, and his *Damages* also, if the Term be not ended, and if it be, all his *Damages*:

And the *Process* in that Writ is *Summons, Attachment, and Distress infinite*, and not Process of Outlawry, because the Writ is not *vi & armis*, and the Form of the Writ appeareth after.

But this Writ of *Quare, &c.* was devised, as it is said, by a wise Man called *William Martin*, and for that cause, if a Man leases Lands for Years, and after he ousts his Lessee, and after he hath put him out, and he makes a Feoffment of the Land to a Stranger in fee, now the Lessee cannot have a Verdict in *Ejectione firme* against him who is the *Feoffee*, because he did not put him out of possession;

session ; so that in that Case, the *Lessee* had no Remedy but to enter again into the Lands, and if the *Feoffee* do then put him out, the *Lessee* may then have a Writ of *Ejectione firmae vi & armis* against him, for the Wrong done him : But before Entry he had no Remedy against the *Feoffee*, for he could not have an *Ejectment*, there being no Force used ; and there could be no Force where there was no Entry, therefore the *Lessee* was without Remedy any otherwise than by entering on the Land, which he had Authority to do by his Lease : But sometimes great Men by Force under Feoffments kept out their *Lessees* which they had contracted with, and who dare not enter, and then the Tenant was without Remedy, 'till that Writ was devised ; and therefore by the Equity of the Statute of *West.* 2. 1. 24. as often as it shall hereafter happen in the Chancery, that in one Case a Writ is found, and in the like Case falling under the same Law, and wanting the same Remedy, &c. Let the Clerks of the Chancery agree, &c.

And by reason of that Statute was this Writ devised ; but yet if the *Lessor* puts out the *Lessee*, and presently maketh a Feofiment in Fee ; so as the *Feoffee* be party

party or privy to the Ouster of the *Lessee*, the *Lessee* shall have a Writ of *Ejectment* *vi* & *armis* against the *Feoffee*, because he is party to the Ouster, and to the Wrong done unto him, and the Writ followeth.

Rex vic. Salutem. Si A. fecerit, &c.
tunc sum. &c. C. quod sit, &c. Osten-
surus quare defor. prefat. A. unum
messuag. cum pertin. in N. quod C. ei di-
misit ad terminum qui nondum præterit,
infra quem terminum, idem C. prefat.
B. messuag. illud vendidit, occasione
oujus venditionis idem B. prefat. A. de
Messuag. predict. ejicit ut dicitur, &
babeas, &c.

And the like Writ lieth where the Son and Heir of the Lessor maketh a Feoffment, &c. and the *Feoffee* ousteth the *Lessee*.

And if the *Lessee* granteth over his Term, and afterwards the *Lessor* maketh a Feoffment in fee of the Land to a Stranger, now the second *Lessee* shall have that Writ, &c. and the Writ shall be,

Quare deforc. prefat. B. unum
messuag. &c. quod R. in L. illi dimisit

Of a Quare Ejicit

ad terminum qui nondum preterit, &c.
See the Register, &c. Fitz Nero, *Natura Brevia*, 478.

And so if Four let a House to *A* for Years, who granteth over his Estate to *B*, and afterwards two of the *Lessors* die, and the Survivors make a Feoffment to *C* in fee, *B* shall have a *Quare ejicit infra*, &c. against the said *Feeffe*, and the Writ shall recite the special Matter.

And if a Man doth lease Lands for Years, and the *Lessor* doth suffer a Recovery to be against him upon a feigned Title, and the Recoverer entereth, yet it seemeth the *Leesee* shall have this Writ of *Quare*, &c. and the Words of the Writ are, *Ocassione cuius venditionis*; and yet the same is not properly a Sale, but these Words are but of Form; but before the Statute of 21 *H. viii. c. 15.* it seems that the Tenant for Years could not have falsified the Recovery against his *Lessor*.

At the Common Law, Terms for Years were generally small Interests, and only from Year to Year, and the Termers were looked on only as Bayliffs to the Freeholders, these Terms were only on Contract, if the Termers were ejected, they had remedy on their Covenants

venants against their Lessors. The Statute of *West.* 2. which gave the *Quare,* &c. was the first Statute which gave them remedy against the *Lessor* by a Judgment, for the Ejectment was only in the nature of an Action of *Trespass*, which gave remedy only in Damages, until 11 Hen. vii. when the *Habere Facias* began to be in that Case also allowed: But though by this Writ of Mr. *Martin*, which gave them remedy was by Collusion, and if it was given in Evidence, he might encounter and shew it was by Collusion, and then he could against the *Lessors*, and any Person colluding with them, yet they had no Remedy against the Recoverer at the Common Law, because they were not party to the Writ, for no body was made party to the Writ but a Person who had a Tenement Interest, and being not Parties, they could not be recited to plead thereunto.

But to help this, the Statute of *Gloc.* C. 11. provides, That the *Terror* shall make himself party to the Writ upon the default of the Tenant, and shall be recited to defend the Title of the *Lessor*, if he comes in before Judgment: But this was no compleat Remedy, for still if the *Lessor* suffered a Recovery by

Of a Quare Ejecit

a feigned Title, there was a Record against the *Termor*, which he could not traverse, so his Title was destroyed, and he had remedy only in Damages on his Covenants. To help this, the Statute of 21 *Hen. viii.* C. 15. was made, and from thenceforth if in this Action the *Lessor* had set up a feigned Title by Recovery against the *Leessee*, that did not destroy his Action in remainder, and turn round to a Writ of Covenants, but he might reply on such Recovery, if it were pleaded in Bar, and shew that it recover the Term itself in that Action, notwithstanding such collusive Recovery.

And if a Man lease Lands for a Term of Years, and afterwards dieth without Heir, and the *Lord* by *Escheat* enter, and puts out the Termor, it is a doubt whether he shall have a *Quare ejecit*, &c. against the *Lord* by *Escheat*, but it seemeth reasonable he should.

If the *Lord* by *Escheat* enters, he shall not avoid the Lease, because by granting the Estate to the Tenant in Fee simple, he granted him full Power to alien or charge the Estate; and where such Estate escheats to the *Lord* charged with a Lease, it is only an *Escheat* of the Reversion upon that Lease; for the Power

Power of Alienation, which was given by Infeudation, extends to all Acts executed upon the Estate, because such Acts are *in tanto* an Alienation, but do not extend to *Onera*, which are not actually executed; for there the Lord comes in by Title Paramount, and the Estate can never be charged in the Hands of the Lord by any Act of the Feudatory, unless it had taken place in the time of such Feudatory, whereby the Power of Alienation was actually executed: therefore a *Stat. Staple* or *Merch.* &c. shall not bind the Lord by *Escheat*, unless the Land be actually extended.

And see if the Villain leaseth Lands for Years, and after the Lord of the Villain enters, and puts out the Termor, the Lessee shall have that Writ.

The Villain is free to every body but his Lord, and therefore if the Villain leases Lands before the Entry of the Lord, the Lessee has Title, because the Lord gains Title by Entry, and 'till then the Property is in the Villain; for the Villain having taken it by *Livery of Seisin coram paribus*, the Lord could not take the Estate from the Villain but by entry, therefore if the Villain had entered

Of a Quare Ejecit

entered before the Lord's Entry, the Lord could not have entered on the Estate, because he could not enter on the Property of a Free-man: In the same manner he could not in this Case have entered upon the Lessee for Years, who is likewise free, in order to eject him, but it seems he may enter to claim his Reversion, which is still in his Villain; And so if a Man leaseth Lands for Years, and afterwards a Stranger puts out the Lessee, and disseizeth the Lessor, and afterwards the Lessor releaseth to him, it seemeth the Lessee shall have the Writ *Quare, &c.* against the Disseisor, &c.

And *Quare, &c.* lieth against the Lessor, as against his Feoffee, *quod vide 19 Hen. vi.*

And it seemeth that the Sale, supposed in the Writ, is not traversable, but only the Ejement, &c, and if so, then it seemeth the Writ lieth against the Lord by *Esbeat*, or against the Lord of the Villain who putteth out the Termor, &c.

But an *Ejectione firma*, lieth against the Lord of the Villain, if he puts the Termour out of his Lease made by his Villain before Entry made by the Lord into

into the Land, and so an *Ejectione firma* lieth against the Lord by *Esbeat*, if he Oust the Termor of the Lease made by the Tenant, &c.

And by the Book of 19 H vi. it appeareth, that it is in the Election of the Lessee to sue a Writ of *Ejectione firma*, or a Writ of *Quare*, &c. against the Lessor, or his Heir, or against the Lord by *Esbeat*, or against the Lord of the Villain if he puts the Termor out of his Term, &c.

It is plain that the *Quare*, &c. lies not only against the Lessor himself, but against his Feoffee, or any Person who comes in, in the *Per*, for they ought not to oust their Lessees that hold of them, having only the Reversion in them, and as Tenant for Life might have a Writ of Entry against his Lessor, or the Reversioner if the Lessor or Reversioner disfised him; so this Writ was formed in similitude that the Tenant for Years might have Remedy if the Lessor Ejected him, and it was rather formed in the Case, because on a Lease there was no living, and there was an Estate for Life, and therefore if no Special Writ had been formed, the Tenant would have had no Remedy to recover the Land it self, but only Damages

ges in an Action of Covenant; but that Action of Covenant would have run with the Land, if the Lessor had covenanted for himself, his Heirs and Assigns; and therefore the Remainder ought to go to the Feoffee, because after the Lease made, the Conveyee of the Lessor amounted in Truth to no more than a Grant of the Reversion, and by consequence the Feoffee coming into the same Reversion, ought to be liable to the same Action, and the same Law must be touching the Lord by *Escheat*, he coming in by *Escheat* to the Reversion, and not to the Possession it self.

A Collection of
SELECT PRECEDENTS
OF THE
ENTRIES and PROCEEDINGS
under this Title *Ejectment*.

Proceedings in EJECTMENT.

A Lease in Ejectment, where the Premises are not inhabited, in order to recover the Possession.

THIS Indenture, made the three and twentieth Day of May, in the fifth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth, Anno Domini 1732. Between *John Andrews* of the Strand, Victualler, of the one Part, and *John Lilly*, Gent. of the other, witnesseth, That he, the said *John Andrews*, for divers good Causes and Considerations him thereunto moving, hath demised, granted, and to farm letten, and by these Pre-

Precedents of the

Premises doth demise, grant, and to farm let unto the said *John Lilly*, all that his Meisusage commonly called or known by the Name of *Tallow-Chandler's Head*, situate, lying, and being in *Bloomsbury Market-Place*, in the Parish of *St. Giles's in the Fields*, in the County of *Middlesex*, and late in the Possession of one *Henry Duncomb*, to have and to hold the said Premises, with the Appurtenances, from the Date of these Presents, for and until the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; provided always, and upon condition, that if the said *John Andrews*, his Executors or Administrators, shall at any time after the 30th Day of this present *May*, tender to the said *John Lilly*, his Executors or Administrators, one Shilling, then this present Indenture, and every thing therein contained, shall be void and of none Effect (any thing herein contained to the contrary in any wise notwithstanding). In Witness whereof the Parties aforesaid have hereto interchangeably set their Hands, &c.

A Declaration in Ejectment by Bill.

Middst *ff.* *A B* complains of *C D*, being in the Custody of the Marshal of the *Marshal-Sea* of our Sovereign Lord the King, before

fore the King himself, for that whereas *E T* Gentleman, on the tenth Day of *May*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, King of *Great Britain*, and so forth, at *Westminster*, in the County of *Middlesex*, had demised, granted, and to farm let to the said *A.* five Messuages, (*reciting the rest of the Parcels*) with the Appurtenances, situate, lying, and being in the Parish of *St. Martin's in the Fields*, in the said County of *Middlesex*, to have and to hold the said Tenements, with the Appurtenances, to the said *A B* and his Assigns, from the 25th Day of *March* then last past, to the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; by virtue of which said Demise, he the said *A* entered into the said Tenements, with the Appurtenances, and was thereof possessed until the said *C.* afterwards (that is to say) on the same tenth Day of *May*, in the sixth Year aforesaid, with Force and Arms entered into the said Tenements, with the Appurtenances, in and upon the Possession of the said *A*, and ejected, drove out, and removed the said *A.* from his said Farm, during his said Term not yet expired; (and the said *A.* being so ejected, drove out, and removed) the said *C* hitherto hath withheld

held from him, and still doth withhold the Possession thereof, and then and there brought other Injuries upon him, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *A* twenty Pounds, and thereupon he brings his Suit, &c.

A Declaration in Ejectment by Original.

Michaelmas, the Sixth of King George the Second.

Somersetshire, ff. A B late of Taunton in the said County, Yeoman, was attached to answer to *E F* in an Action, wherefore he entered into a Mesuage, a Barn, and a Stable, with the Appurtenances, in *G*; which *H J*, Gentleman, demised to the said *E* for a Term which is not yet expired, and ejected him from his said Farm, and did other Wrongs to him, to the great Damage of the said *E*, and against the Peace of our Sovereign Lord the King; and whereupon the said *E*, by *Henry Cruwys* his Attorney, complains, that whereas the said *H J*, on the first Day of *May*, in the fifth Year of the Reign of his present Majesty, at *Taunton* aforesaid, had demised to the said *E* the said Tenements, with the Appurtenances, for him the said

said *E*, and his Assigns, to have and enjoy the said Tenements, with the Appurtenances, from the first Day of *March* then last past, to the full End and Term of five Years then next following, and fully to be compleat and ended: By virtue of which said Demise the said *E* entered into the said Tenements, with the Appurtenances, and was possessed thereof, and being so possessed thereof, the said *A* afterwards (that is to say) on the same first Day of *May*, in the said fifth Year, with Force and Arms ^{*(that} These Words are, I think, better omitted. *is to say*) *with Swords, Staves and Knives*, entered into the said Tenements, with the Appurtenances, which the said *H J* demised to the said *E* in manner as aforesaid, for a Term which is not yet expired, and ejected the said *E* out of his said Farm, and did him other Wrongs, to the great Damage of the said *E*, and against the Peace of our said Sovereign Lord the King; whereby the said *E* declares he is injured and endamaged to the Value of twenty Pounds; and therefore he brings his Suit, &c.

The Notice.

To Sir William Buck, Baronet.

I am informed that you are in Possession, or claim Title to the Premises mentioned in this Declaration of Ejectment, or to some Part thereof; and I being sued in this Action as a casual Ejector, and having no Claim or Title to the same, do advise you to appear the first Day of next *Hillary Term*, in his Majesty's Court of King's-Bench at *Westminster*, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my stead, otherwise I shall suffer a Judgment to be entered against me, and you will be turned out of Possession.

Your Loving Friend,

Lawrence Lane.

The

The common Rule in Ejectment in the King's-Bench.

Michaelmas Term, in the sixth Year of the Reign of King George the Second.

Surry. It is ordered, by the Consent of the Attorneys for both Parties, that *C D* be admitted Defendant instead of the now Defendant *T P*, and that he forthwith appear at the Suit of the Plaintiff, and file common Bail, and receive a Declaration in a Plea of Trespass and Ejectment for the Tenements in question, and forthwith plead thereunto not guilty; and that upon the Trial of the Issue, he confess Lease, Entry, and Ouster, and insist upon the Title only, otherwise let Judgment be entered by the Plaintiff against the now Defendant *T*. by Default; and if upon the Trial of the said Issue the said *C D* shall not confess Lease, Entry, and Ouster, by which the Plaintiff shall not be able further to prosecute his Bill against the said *C*. then no Costs or Charges shall be awarded upon such Non-suit, but the said *C*. shall pay to the Plaintiff the Costs and Charges thereupon to be taxed: And it is further ordered, that if upon the Trial of the said Issue a Verdict shall be given

Precedents of the

for the said (Defendant), or if it shall happen the Plaintiff shall not further prosecute his said Bill for any other Cause, than for not confessing Lease, Entry, and actual Ouster aforesaid, that then the Plaintiff's Lessor shall pay to the said *C.* his Costs and Charges in that Case to be adjudged, &c.

The Rule in the Common-Pleas.

Hillary Term, the fifth of King George the Second.

Norfolk. It is ordered by the Consent of *Robert Martin* the Plaintiff's Attorney, and *John Cock*, Attorney for *A B*, who claims a Title to the Tenements in question, that the said *A B* be admitted Defendant, and that the said *A* shall immediately appear by his said Attorney, who shall receive a Declaration, and plead thereto the general Issue this Term; and that the said *A*, at the Trial thereupon to be had, shall appear in his proper Person, either by his Council or Attorney, and acknowledge Lease, Entry, and actual Ouster, of such of the Tenements specified in the said Declaration, as are in the Possession of the said Defendant, or his Under Tenant, or any Person claiming by or under his Title

Title thereto, or that in Default thereof, Judgment shall be entered against the said Defendant as the casual Ejection; but the Proceedings to stay against him until there be a Default in some of the Premises: And by the like Consent it is ordered, that if by reason of such Default the Plaintiff become nonsuited at the Trial, the said *A* shall take no Advantage thereof, but shall pay Costs for the same to the said Plaintiff, to be taxed by the Prothonotary. And it is further ordered, that the Lessor of the Plaintiff be chargeable with the Payment of such Costs, as shall be allowed and awarded by this Court to the said *A* in any manner howsoever.

*A Declaration for the Mesne Profits in
an Ejectment tried Mich. 11 K. W.*

*Worcestershire. John Durban, late
of Willersey in the County of Gloucester,
Yeoman, was attached to answer to
John Underhill, of a Plea wherefore
with Force and Arms he broke and en-
tered into three Messuages, five hundred
Acres of Land, two hundred Acres of
Meadow, and two hundred Acres of
Pasture, with the Appurtenances, in
Treddington in the County of Worcester,
and drove out and removed the said
John Underhill from the Possession and*

Precedents of the

Occupation of his said Tenements, and for a long time with-held the said *John Underbill* from the Possession and Occupation of the same, (he being so driven out and removed therefrom as above) and the said *John Durbam*, during all the Time aforesaid, had and received to his own proper Use, all the Issues and Profits of the said Tenements of the yearly Value of two hundred Pounds, and brought other Injuries upon the said *John Underbill*, to the great Damage of the said *John Underbill*, and against the Peace of our Sovereign Lord the King, his Crown and Dignity; and whereupon the said *John Underbill*, by *Giles Taylor* his Attorney, complains that the said *John Durbam*, on the first Day of *June*, in the fifth Year of the Reign of his said present Majesty, with Force and Arms broke and entered into the said *three Messuages, five hundred Acres of Land, two hundred Acres of Meadow, and two hundred Acres of Pasture*, with the Appurtenances, in *Treddington* in the said County of *Worcester*, and drove out and removed the said *John Underbill* from the Possession and Occupation of his said Tenements, and for a long time (*that is to say*) from the first Day of *June*, in the tenth Year aforesaid, until the Day of suing out the Original Writ of the said *John Underbill*,

Underhill, with-held the Possession and Occupation of the said Tenements from the said *John Underhill* (he being so driven out and removed as above), and also the said *John Durham* had and received to his own Use all the Issues and Profits of the said Tenements of the yearly Value of two hundred Pounds, during all the Time aforesaid, and brought other Injuries upon the said *John Underhill*, to his great Damage, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity; wherefore he declares he is injured and endamaged to the Value of Fifty Pounds, and therefore he brings his Suit.

And the said *John Durham*, by *J L* APleinAbate-
his Attorney, comes and defends the ment, that Force and Injury, and craves Oyer of there is no such Writ in the Register. the said Writ, and it is read to him in these Words, *GEORGE the Second*
by the Grace of God, King of Great
Britain, France, and Ireland, Defender
of the Faith, &c. to the Sheriff
of Worcester, Greeting. If JV shall
give you Security that his Suit shall be
prosecuted, then put JD, late of Gloucester,
Yeoman, by Sureties and safe
Pledges, that be be before us in one
Month from the Day of Easter, where-
soever we shall then be in England, to

Precedents of the

shew wherefore with Force and Arms he broke and entered into three Messuages, five hundred Acres of Land, two hundred Acres of Meadow, and two hundred Acres of Pasture, with the Appurtenances, in Treddington in your County, and for a long time withheld the said JV from the Possession of the said Tenements, he being so driven out and removed, and also during the Time aforesaid had and received all the Issues and Profits of the said Tenements, to the Value of two hundred Pounds, to the sole Use of the said JD, and brought other Injuries upon the said J, to the great Damage of the said JV, and against our Peace; and have you there the Names of the Pledges, and this Writ. Witness Our-self at Westminster, the 12th Day of April, in the fifth Year of our Reign. Which being read and heard, the said J D prays Judgment of the said Writ, because he pleads that there is not any such Form of a Writ in an Action of *Trespass and Ejectment* in the Register of Writs, as the Form aforesaid; and that the said Writ varies from the said Register of Writs in this Respect, inasmuch as it does not appear by the said Writ that the Messuages and Lands therein mentioned were the Messuages and Lands of the said JV: And this he is ready to verify;

verify; wherefore he prays *Judgment* of the said *Writ*, and that the same might be quashed, &c.

It is said, this Plea upon a Demurrer was over-ruled.

And the said *J D*, by *J L* his Attorney, comes and defends the Force and Injury, when, &c. and as to coming with Force and Arms, and whatever else is

A Plea of the
Common Bar
because the
Plaintiff doth
not name the
Closes.

against the Peace of our Sovereign Lord the King, the said *J D* pleads he is not guilty thereof; and the said *J V* prays likewise the same: And as to the Residue of the said Trespass above supposed to have been committed, the said *J D* pleads, that the said *J V* ought not to have or maintain his said Action thereon against him, because he avers, that the said Messuage, and also the said Places wherein the said Trespass and Ejectment is supposed to have been committed, are, and at the same time when the said Residue of the said Trespass and Ejectment is supposed to have been committed, were, one Messuage called the *White House*, another Messuage called the *Black House*, another Messuage called the *Red House*, and five hundred Acres of Land called *Black Lands*, two hundred Acres of Meadow called *White Lands*, and two hundred Acres of Pasture called *Red Lands*, with the

Ap-

Precedents of the

Appurtenances in *Treddington* in the said County; which said Tenements, with the Appurtenances, are, and at the same time when, &c. and also during all that time in the Declaration mentioned, were the very Soil and Freehold of the said *J D*; for which Reason he the said *J D* at the same time when, &c. and during all that time mentioned in the said Declaration, broke and entered into the said several Messuages, and Lands, Meadows, and Pasture, as into his own Messuages, Meadows, and Pasture, the same being in the Possession of him the said *J D*, and kept the Possession and Occupation thereof during all the Time mentioned in the said Declaration, and took and received the Issues and Profits of the said Messuages and Tenements during all the Time mentioned in the said Declaration, as it was lawful for him to do. And this the said *J D* is ready to verify; whereupon he prays Judgment, whether the said *J V* ought to have or maintain his said Action thereupon against him, &c.

The Defendant
justifies in
Ejection by
virtue of a De-
mise made to
him by the
Lessor of the
Plaintiff.

And the said *J A*, by *WF* his Attorney, comes and defends the Force and Injury, when, &c. And as to coming with Force and Arms, and whatsoever else is against the Peace of our Sovereign Lord the King, he pleads, that he is not

not guilty thereof; and thereof he puts himself on the Country, and the said *C D* does likewise the same. And as to the Residue of the said Trespass and Ejectment above supposed to have been committed, the said *F A* pleads, that the said *C D* ought not to have or maintain his said Action thereupon against him; because he avers, that the said *R C*, (*the Lessor of the Plaintiff*) before the said Time when the Residue of the said Trespass and Ejectment was supposed to have been committed, and before the said Demise made by the said *R C* to the said *C D*, in the manner as aforesaid (to wit) on the 5th Day of *November*, in the 5th Year of the Reign of his present Majesty, he the said *R C* demised the said Messuages, with the Appurtenances, to the said *F A*, to have and to hold to him the said *F A* and his Assigns, from thence to the End of twenty Years then next following, and fully to be compleat and ended; by Virtue of which said Demise, he the said *F A* was possessed of the said Messuages, with the Appurtenances, until the said *R C* entered into the said Tenements, with the Appurtenances, upon the Possession of the said *F A*, and drove out and removed him the said *F A* from his Possession of the said Tenements, and thereby was seized thereof in his Demesne as of

Precedents of the

a Fee ; and the said *RC* being so seized thereof before the said Time when, &c. namely, on the 12th Day of June, in the said 5th Year, at *D* aforesaid, he the said *RC* demised the said Tenements, with the Appurtenances, to the said *CD*, to hold to him and his Assigns, from the said Feast of the *Annunciation of the Blessed Virgin Mary* (*that we will suppose the Time in the Declaration*), in the Year aforesaid, unto the full End of the Term of twenty Years from thence next ensuing, and fully to be compleat and ended ; by reason whereof, the said *CD* was possessed of the said Tenements, with the Appurtenances, as the said *CD* doth above suppose in his said Declaration ; upon whose Possession of the said *CD*, he the said *JA* afterwards, (*namely*) at the same time when, &c. he the said *JA* re-entered into the said Mesuages, with the Appurtenances, and ejected the said *CD* from his said Farm, as it was lawful for him to do : And this he is ready to verify ; wherefore he prays Judgment, whether the said *CD* ought to have or maintain his said Action thereupon against him, &c.

Replication
traversing the
Leave.

And the said *CD*, as to the residue of the said Trespass and Ejection, replies, That he, (notwithstanding any thing

thing above alledged by the said *JA* in his said Plea), ought not to be precluded from having his said Action thereupon against him, because he avers, that before the said Time of committing the said Trespass in Ejectment, (*namely*) on the twelfth Day of *June*, in the said fifth Year, &c. at *D* aforesaid, he the said *RC* demised the said Tenements, with the Appurtenances, to him the said *CD*, for him and his Affigns to have and occupy the same, from the said Feast of the *Annunciation of the Blessed Virgin Mary*, in the said fifth Year, until the End of the Term of twenty Years from thence next ensuing, and fully to be compleat and ended, as the said *CD* doth above suppose by his said Declaration: *Without that*, That he the said *RC*, before the said Demise made by him the said *RC* to him the said *CD*, (*namely*) on the said fifth Day of *November*, in the said fifth Year, &c. demised the said Tenements, with the Appurtenances, to the said *JA*, as the said *JA* doth above alledge: And this he is ready to verify; whereupon in as much as the said *JA* doth above acknowledge the said Trespass and Ejectment to be committed, as aforesaid, the said *CD* prays Judgment, and that the Term aforesaid, and his Damages by reason of the Residue of the

Precedents of the
the said Trespass and Ejectment, may
be awarded to him, &c.

To part not
guilty to the
residue, that
RC the Brother
of the Lessor
denised the
Tenements
with the Ap-
pertunances.

That C was
seized in Fee,
and denised
to the Defen-
dant.

That the Plain-
tiff entered,
was possessed.

That C died
without Issue.

And the said WB and J, by RB
their Attorney, come and defend the
Force and Injury, when, &c. and as to
coming with Force and Arms, &c. they
plead, that they are in no wise guilty
thereof, and thereof they put themselves
on the Country, and the said WR doth
likewise the same: And as to the Re-
sidue of the said Trespass in Ejectment,
above supposed to have been committed,
the said WB and J plead, That the
said WR ought not to have his said
Action thereupon against them, because
they say, That one RC, Brother to
said S (Lessor of the Plaintiff), whose
Heir he is, before the said Time, when,
&c. and before the said Time when the
said Lease is supposed to have been
made, was seized of the said Tenements,
with the Appurtenances, in his Demesne,
as of a Fee; and being so seized, the
said RC before the said Time when,
&c. namely, on the 29th Day of Sep-
tember, in the fifth Year of the Reign
of his said present Majesty, at Field-
Dawling aforesaid, denised to the said
WB and J the said Tenements, with
the Appurtenances, to have and to hold
the said Tenements, with the Appurte-
nances, to the said WB and J, and
there

their Assigns, from the said 29th Day of September, in the Year of our Lord 1731, to the full End and Term of one whole Year then next ensuing, and fully to be compleat and ended: By virtue of which said Demise, they the said *WB* and *J*, before the same Time when, &c. entered into the said Tenements, with the Appurtenances, and was thereof possessed; and the said *WB* and *J* being so possessed thereof, and the said *RC* being seized of the Reversion thereof in this Demesne, as of a Fee, he the said *R*, before the said Time when, &c. at *Field Dawling* aforesaid, died seized of such his Estate therein, without any Heir issuing of his Body, after whose Death the Reversion of the said Tenements, with the Appurtenances, descended to the said *SC*, as Brother and Heir to the said *RC*, whereby the said *S* was seized of the Reversion in his Demesne, as of a Fee; and the said *S* being so seized thereof, and they the said *WB* and *J* being possessed of the said Tenements, with the Appurtenances, in the manner aforesaid, he the said *S*, before the said Time when, &c. entered into the said Tenements, with the Appurtenances, upon the Possession of the said *WB* and *J*, and drove out and removed them the said *W* and *J* from their said Possession, and thereby,

That the Re-
version descen-
ded to the
Lessor of the
Plaintiff,

thereby became seized of the said Tenements, with the Appurtenances, in his Demesne, as of a Fee ; and being so seized thereof, the said *Samuel*, on the said Sixth Day of *May*, in the said Fifth Year of the Reign of his said present Majesty (*that being the Day of the Demise in the Declaration*), demised to the said *WR* the said Tenements, with the Appurtenances, to the said *WR* and his Assigns, from the said last Day of *March*, then last past, (*that being the Day mentioned in the Declaration*), until the End and Term of two Years then next ensuing, and fully to be compleat and ended ; by

Who entered and demised to the Plaintiff.

That the Plaintiff entered and was possessed.

Upon whose Possession the Defendants entered and ejected him.

virtue of which Demise, the said *WR* before the said time when, &c. entered into the said Tenement, with the Appurtenances, and was thereof possessed ; upon whose Possession, they the said *WB* and *F* afterwards, (*namely*) at the said Time when, &c. entered into the said Tenements, with the Appurtenances, claiming their said Term therein, and ejected the said *WR* from his said Farm, as it was lawful for them so to do : And this they are ready to verify ; whereupon they pray Judgment, whether the said *WR* ought to have his Action thereupon against them, &c.

And

And the said *WR* replies, That he (notwithstanding any thing above alledged) ought not to be precluded from having his said Action against the said *WB* and *J*, because he avers, That long before the said *RC* had any thing in the said Tenements, with the Appurtenances, one *WF* was possessed of the said Tenements, with the Appurtenances, (amongst other things) in his Demesne as a Fee; and being so seized thereof afterwards, and before the said time of committing the residue of the said Trespass and Ejectment, (*namely*) on the 29th Day of *April* in the first Year of the Reign of his present Majesty; the said *WF* enfeoffed the said *RC* of the said Tenements, with the Appurtenances, for his natural Life, and after the Decease of the said *R*, then to the Use and Behoof of the said *Samuel*, his Heirs and Assigns for ever, by Virtue of which said Feoffment and by Force of a certain Act published in the Parliament of his said late Majesty *Henry the Eighth*, late King of *England*, held at *Westminster* in the County of *Middlesex*, on the 4th Day of *February*, in the 27th Year of his Reign, for transferring Uses into Possession, the said *RC* was seized of the said Tenements, with the Appurtenances in his Demesne, as of a Freehold, for the Term of his natural Life, the Remainder thereof after the Decease of the said *R*, to the said *S*,

L and

Precedents of the

and his Heirs: And the said *R C* being so seized thereof, the Remainder thereof belonging to the said *S* in the Manor aforesaid, he the said *R* before the said Time when, &c. (namely) on the twenty ninth Day of *September*, in the said fifth Year, at *Field-Dawling* aforesaid, demised to the said *WB* and *J* the said Tenements, with the Appurtenances, to have and to hold to them and their Assigns, from the said Feast of the *Annunciation of the Blessed Virgin Mary* then next ensuing, until the full End and Term of one whole Year then next ensuing, and fully to be compleat and ended, as the said *WB* and *J* hath above alledged in their said Plea: By Virtue of which said Demise, they the said *WB* and *J*, before the said Trespass and Ejectment was committed, as aforesaid, entered into the said Tenements, with the Appurtenances, in which, &c. and were thereof possessed; and being so possessed thereof, the said *R C* afterwards, and before the said Time of committing the said Trespass and Ejectment, died at *Field-Dawling* aforesaid, after whose Decease and before the said Time when, &c. the said *S* entered into the said Tenements with the Appurtenances upon the said *WB* and *J*, and was seized of the said Tenements, with the Appurtenances, in which,

&c.

&c. in his Demesne, as of a Fee; and being so seized thereof on the said sixth Day of *May*, in the said Year of our Lord one thousand seven hundred and thirty two, at *Field-Dawling* aforesaid, demised the said Tenements, with the Appurtenances, to the said *WR*, to have and to hold to the said *WR* and his Assigns, from the said last Day of *March*, then last past, until the End of two Years, then next ensuing, and fully to be compleat and ended, as it was lawful for him so to do: *Without that*, That the said *RC* was seized of the said Tenements, with the Appurtenances, in which, &c. in his Demesne, as of a Fee, in such Manner and Form as the said *WB* and *J* have above alledged: And this he is ready to verify; wherefore in as much as the said *W* and *J* do above acknowledge the said Trespass and Ejectment, he the said *WR* prays Judgment, and that the Possession of the said Tenement yet to come and unexpired of and in the said Tenements, with the Appurtenances, together with Damages occasioned by the said Trespass and Ejectment, may be awarded to him, &c.

And the said *WB* and *J* rejoin, as before, That the said *RC* was seized of the said Tenements, with the Appurtenances in his Demesne, as of a Fee, in

L 2 such

Precedents of the

such Manner and Form as they the said *W* and *Z* have above alledged ; and thereof they put themselves on the Country, and the said *WR* doth likewise the same : Therefore the Sheriff is commanded, that he cause to come here in three Weeks from the Day of the *Holy Trinity*, twelve, &c. by which, &c. and who neither, &c. to recognize, &c. because as well, &c.

Nor guilty as
to the Force
and Arms.

Bar to the
Residue.

That *WG* was one *WG* Gentleman, was seized of the said Messuage with the Appurtenances late in his Demesne as of a Fee, and held the same of their late Majesties *K. Philip* and *Q. Mary*, late King and Queen of *England*, of their Manor of *Heither* in the County of *Leicester*, in free Socage, namely by Fealty only ; and the said *W* being

And the said *TC* by *ZK* his Attorney, comes and defends the Force and Injury, when, &c. and as to coming with Force and Arms he pleads, That he is in no wise guilty thereof, and thereof he puts himself upon his Country, and the said *R* doth likewise the same ; and as to the residue of the said Trespass and Ejection above supposed to have been committed, the said *T* pleads, That the said *R H* ought not to have his said Action thereon against him, because he avers that long before the said Time when the said Trespass and Ejection supposed was to have been committed,

being so seized (*thereof*) long before the time when *Ec.* namely, on the 26th Day of *August*, in the sixth Year of the Reign of their said late Majesties, at the said Parish of St. *Clement Danes*, in the said County aforesaid, made his last Will and Testament in Writing, and thereby devised, among other things, the said Messuage with the Appurtenances, to one *J L*, then Wife of the said *R L*, for the Term of the Natural Life of the said *J L*, Remainder thereof after the Decease of the said *J*, to *R L* and *J L*, Sons of the said *Jane*, for the Term of twenty one Years then next ensuing and fully to be complete and ended; the Remainder thereof after the End and Determination of twenty one Years to *M G* and *E G*, Sons of the said *WG*, and the Heirs Male of their Bodies lawfully begotten: And for default of such Issue the Remainder thereof to the Heirs of the said *WG*; and afterwards (*namely*) on the twentieth Day of *August*, in the said sixth Year, the said *W* died at the said Parish of St. *Clement Danes* seized of the said Messuage with the Appurtenances in the Manner aforesaid; after whose Death the said *R L* and *J* his Wife, in *That RL and J entered.* right of the said *Jane*, entered into the said Messuage with the Appurtenances, and were seized thereof in their Demesne as of a Freehold, for the Term of the

Made his Will,
and devised the
Lands to *J* the
Wife of *RL* for
Life.

Remainder to
RL and J L
his Sons for
twenty-one
Years;

With Remain-
der over,

Natural Life of the said *Jane*, by virtue of the said Devise, the Remainder thereof after the Decease of the said *Jane*, to the said *R* and *J* for the said Term of twenty one Years; the Remainder thereof after the Determination of that Term to the said *M* and *E*, and the Heirs Male of their Bodies lawfully begotten; Remainder thereof for default of such Issue, to the right Heirs of the said *WG*. And they the said *R* and *J* being so seized, he the said *G* afterwards and before the Time when, &c. namely, on the twenty fourth Day of *March*, in the third Year of the Reign of our Sovereign Lady Queen *Elizabeth*, died at the said Parish of St. *Clement Danes*, and the said

That *R L* died, and that *J* was sole seized by Survivorship. *Jane* survived him, and held the said Messuage with the Appurtenances, and was sole seized thereof for the Term of her Life; and being so seized thereof, he

That *EG* died without Issue. the said *EG* afterwards (namely) on the ninth Day of *March*, in the sixth Year of the Reign of our said late Sovereign Lady Queen *Elizabeth*, died at the said Parish of St. *Clement Danes*, without Issue of his Body lawfully begotten. And the said *MG* being so seized of his said Remainder of and in the said Messuage with the Appurtenances, (to wit) one Moiety to him and the Heirs of his Body lawfully begotten, the Remainder thereof to the right Heirs of the said *WG* the Father;

Father; and of the other Moiety there-
of to him and his Heirs as Son and
Heir to *WG* the Father: He the said
MG afterwards (*that is to say*) on
the twentieth Day of *February*, in the
twenty eighth Year of the Reign of our
late Sovereign Lady Queen *Elizabeth*,
at the said Parish of St. *Clement Danes*,
made his last Will and Testament in
Writing, and thereby gave and devised
the said Messuage with the Appurtenan-
ces, to the said *William Talbot*, named
in the said Declaration, and to his Heirs,
under the following Condition (*that is*
to say) that he the said *William Talbot*
Yearly, after the Decease of the said
Jane, for and during the Natural Life
of the Daughter of a Daughter of the
said *Jane*, wou'd well and truly content
and pay to the said Daughter of the
Daughter of the said *Jane*, or to her
Assigns, the Sum of forty Shillings of
lawful Money of * *England*, at the
Feast of St. *Michael* the Archangel,
and the Annunciation of the Blessed Vir-
gin *Mary*, by equal Portions. And the
said *TC* further pleads, That *Elizabeth*
the Wife of one *Henry Sheers*, on the
said twentieth Day of *February*, in the
said twenty eighth Year of the Reign of
our said late Sovereign Lady Queen *E-
lizabeth*, was the Daughter of *Cathe-
rine Howson* Widow, Daughter of the

That *MG* de-
vised to the
Lessor of the
Plaintiff on
Condition.

* Now it
must be of
Great Britain.

said *Jane*; and was the Daughter aforesaid of the Daughter of the said *Jane*, mentioned in the Will of the said *MG*; and the said *MG*, on the sixth Day of *February*, in the twenty eighth Year of the Reign of our said late Sovereign Lady Queen *Elizabeth*, died at *Brentford* in the County of *Middlesex*, without Issue of his Body lawfully begotten. And

That *MG*
died without
Issue.

That *J L*
died seized

the said *Jane* being so seized of the said Messuage with the Appurtenances afterwards (*to wit*) on the twenty fifth Day of *March*, in the thirty third Year of the Reign of our said late Sovereign Lady Queen *Elizabeth*, died at *Brentford* aforesaid, seized of the said Messuage with the Appurtenances; after whose

Death, and before the said Time when, &c. they the said *RL* and *J*, entered into the said Messuage with the Appurtenances, and were possessed thereof by virtue of the said Devise, for the said Term of twenty one Years next after the

Death of the said *Jane*, and fully to be compleat and ended; and being so possessed thereof, they the said *R* and *J* afterwards, and before the said Time when, &c. (*to wit*) on the 20th Day of *October*, in the 33d Year of the Reign of our said late Sovereign Lady Queen *Elizabeth*, died Intestate at *London*, at the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*; after

That they
died Intestate.

whose

whose Death Administration of all the Goods and Chattels of the said *R* and *J*, at the time of their Death, was committed to one *Robert Evans*, by *Richard*, by Divine Providence, Lord Bishop of *London*, by means whereof he the said *Robert Evans* afterwards, and before the said Time when, &c. entered into the said Messuage with the Appurtenances, and was thereof possessed for the Residue of the said Term of twenty one Years.

That *R* & *Ad-*
minister'd and
possessed him-
self of the Re-
sidue of the
Term.

And the said *T C* further pleads, That after the Decease of the said *J L*, the Sum of twenty Shillings, of lawful Money of *England*, was due at the Feast of *St. Michael* the Archangel, in the thir-
ty fourth Year of the Reign of our said late Sovereign Lady Queen *Elizabeth*, to the said *Henry Sheers* and *Elizabeth* his Wife, by virtue of the Condition mentioned in the Last Will and Testament of the said *M G*, and was not paid to them or either of them; by reason whereof the Right to the Reversion of the said Messuage after the Expiration and Determination of the said Term of twenty one Years, descended to the said *Elizabeth*, Wife of the said *Henry Sheers*, and to one *Hugh Fawks*, as Cousin and Heir to the said *M G*, (*that is to say*) to *Elizabeth* as Daughter and Heir of the said *Catherine*, Sister and Heir to the said *Jane*, Sister and one of

The Condi-
tion was bro-
ken by the
Non-payment
of the 40 s. a
Year to *E*
Wife of *H S*.

That after the
Expiration of
the Term of
21 Years, the
Messuage in
Question de-
scended to the
said *E*, and to
one *H J*, as
Cousins and
Heirs of the
said *M G*.

the

Precedents of the

the Heirs of *WG*, the Father of the said *MG*, and to the said *Hugh* as Son and Heir of *Anne*, another Sister and Heir of the said *WG* Father of the said *MG*. And the said *TC* further pleads, That the said Term of twenty one Years on the twenty fourth Day of *March*, in the tenth Year of the Reign of his present Majesty our Sovereign Lord *James*, now King of *England*, ended and expired; by means whereof the said *WT* above named in the said Declaration, after the Expiration of the said twenty one Years, and before the said Time when, &c. namely, on the 29th Day of *June*, in the tenth Year of the Reign of his present Majesty, entered into the said Messuage with the Appurtenances, by virtue of the said last Will and Testament of the said *MG*; and on the 29th Day of *June*, in the tenth Year of the Reign of his present Majesty, demised the said Messuage with the Appurtenances, to the said *Robert Hennyng*, to hold to the said *Robert*, from the said Feast of the Annunciation of the Blessed Virgin *Mary*, for the said Term of seven Years from thence next ensuing; by virtue of which said Demise, he the said *Robert Hennyng* entered into the said Messuage with the Appurtenances, and was possessed thereof as the said *Robert* doth above suppose by his said Declaration

That the Lea-
fors of the
Plaintiff en-
tered and de-
mised to the
Plaintiff.

tion; upon which Possession of the said *Robert Hennyng*, they the said *Henry* and *Elizabeth* his Wife, in right of the said *Elizabeth*, and the said *Hugh Fawkes* afterwards, (namely) on the 7th Day of *July*, in the tenth Year of the Reign of his present Majesty, entered into the said Messuage with the Appurtenances, for the Non-payment of the said twenty Shillings to the said *Elizabeth*, due at the said Feast of St. *Michael* the Archangel, in the 34th Year of the Reign of our said late Sovereign Lady *Elizabeth Queen of England*; and was thereof seized in their Demesne as of a Fee, whereby the said *TC* afterwards, (to wit) on the tenth Day of *July*, in the tenth Year of the Reign of his present Majesty, as Servant to the said *Henry* and *Elizabeth* his Wife, and *Hugh Fawkes*, and by their Command, entered into the said Messuage with the Appurtenances upon the Possession of the said *R H*, and ejected him from the Possession thereof, as it was lawful for him to do, and this he is ready to verify; whereupon he prays Judgment, whether the said *R* ought to have his said Action against him, &c.

Upon which Possession *HS*, and *EH* entered for the Condition broken, and were seized in Fee, whereby the Defendant as Servant to them, and by their Command, entered and Ejected the Plaintiff.

And the said *Robert* replies, that he (notwithstanding any thing above alledged) ought not to be precluded from having

Replication by the Plaintiff, That *E* the Wife of *HS*, is not the Person intended

by the Will of having his said Action, because suggesting, by way of Protestation, that the said *Elizabeth*, Wife of the said *H S*, was not, nor is the Daughter of the Daughter of the said *Jane*, mentioned in the said Will of the said *MG*; he avers for his Replication, that the said *MG*, long before the said Time of committing the said Trespass and Ejection, was seized of the said Messuage with the Appurtenances in his Demesne, as of a Fee.

Devised to the
Lessor of the
Plaintiff in
Fee.

Devised to the said *Michael*, on the said twentieth Day of *February*, in the 28th Year of the Reign of her said late Majesty, made his last Will and Testament in Writing; and did by his said Will give and devise the said Messuage with the Appurtenances, to the said *WT* and his Heirs for ever, and afterwards died; after whose Death, and before the said Time of committing the said Trespass and Ejection, he the said *W* entered into the said Messuage with the Appurtenances, and was seized thereof in his Demesne as of a Fee; and being so seized thereof on the 29th Day of *June*, in the tenth Year of the Reign of

Who entered and demised to the Plaintiff for 7 Years.

his present Majesty, demised to the said *Robert* the said Messuage with the Appurtenances, to have and to hold to him and his Assigns, from the said Feast of the Annunciation of the Blessed Virgin *Mary* then last past, untill the End and Term

Term of seven Years from thence next ensuing, and fully to be compleat and ended; by virtue of which said Demise, the said *Robert* entered into the said Messuage with the Appurtenances, and was possessed thereof; and he the said *Robert* being so possessed thereof, he the said *Thomas*, on the said tenth Day of *July*, in the tenth Year aforesaid, with Force and Arms entered into the said Messuage with the Appurtenances, which the said *WT* demised to the said *R* in the Manner aforesaid, for a Term which is not yet past, and Ejected him from his said Farm against the Peace of our Sovereign Lord the King, as the said *Robert* above complains against him: Without that that the said *MG* by his last Will and Testament gave and devised the said Messuage with the Appurtenances to the said *WT* and his Heirs, under the Condition aforesaid; that the said *WT* Yearly, after the Decease of the said *Jane*, for and during the Natural Life of the Daughter of the Daughter of the said *Jane*, should well and truly content and pay, or cause to be paid, to the Daughter of the Daughter of the said *Jane*, or her Assigns, the said Sum of forty Shillings of lawful Money of *England*, at the said Feasts of St. *Michael* the Archangel, and the Annunciation of the Blessed Virgin *Mary*, by even

Who entered
and was pos-
sessed.

Untill the
Defendant E-
jected him.

And traverses
the Devise to
the Lessor of
the Plaintiff,
upon Condi-
tion as in the
Bar.

Precedents of the

even and equal Portions, as he the said *Thomas* hath above alledged; and this he is ready to verify: Wherefore in as much as the said *Thomas* doth above acknowledge to have committed the said Trespass and Ejectment, he the said *Robert* prays Judgment and the Possession of the said Term of and in the said Messuage with the Appurtenances yet unexpired, together with his Damages occasioned by the said Trespass and Ejectment to be awarded to him, &c.

Demurrer. And the said *Thomas* pleads by way of Rejoinder, That the said Replication of the said *Robert*, and the Matter therein contained, are in Law insufficient for him the said *Robert* to maintain his said Action against the said *Thomas*, and that he is under no Necessity, nor in any wise bound by the Law of the Land, to answer to the said Replication, in such Manner and Form as the same is pleaded: And this he is ready to verify. Whereupon, for want of a sufficient Replication in this Particular, he prays Judgment, and that the said *Robert* may be precluded from having his said Action against the said *Thomas*, &c.

**Joiner in De-
murrer.**

And the said *Robert* (in as much as he hath above alledged in his said Replication, sufficient Matter in Law for him the

the said *Robert* to maintain his said Action against the said *Thomas*, which he is ready to verify; which Matter the said *Thomas* doth not deny, or in any wise make Answer unto, but altogether refuses to admit the same to be verified) as before, prays Judgment and the Possession of his said Term of and in the said Messuage with the Appurtenances yet unexpired, together with his Damages occasioned by the said Trespass and Ejectment to be awarded to him, &c. And because the Justices here are willing to advise themselves of and concerning the Premises, before they give their Judgment thereon; a Day is given to the said Parties here, till in fifteen Days from the Day of *Easter*, for hearing their Judgment thereupon; for that the said Justices are not yet determined, &c.

A Plea in Bar to a Declaration in Ejectment, setting forth the Lease to be made by Mary Paston Widow, to the Plaintiff, on the 7th Day of December, in the twentieth Year of the Reign of King James the First, and the Trespass to be committed on the eleventh of March following.

And the said *Barnard* and *William*, To part the Defendants by *William Hellwys* their Attorney, plead the General Issue, come and defend the Force and Injury, when,

Precedents of the

when, &c. And as to coming with Force and Arms they plead, That they are in no wise guilty thereof, and thereof they put themselves on the Country, and the said *John* doth likewise the same, and as to the Residue of the said *Trespass* and *Ejectment* above supposed to have been committed, they the said *Barnard* and *William* plead, That the said *John* ought not to have his said Action against them, because they plead, That long before the Time when the said *Trespass* and *Ejectment* is supposed to have been committed, and long before that the said *Mary* had any thing in the said fifteen Acres of Land, with the Appurtenances, in which, &c. one *Edward Paaston*, Esq; was seized of the Manor of *Binbam*, in the County aforesaid, whereof the said fifteen Acres, with the Appurtenance in which, &c. now are, and at the time when, &c. where, and for so long time before as there is no remembrance of any Man to the contrary, where Parcels in his Demesne as of a Fee; and that the said fifteen Acres of Land, with the Appurtenances in which, &c. now are, and at the said time when, &c. were, and for the whole aforesaid, have been customary Lands of the said Manor, and demised and demisable by Copy of the Court Roll of the said Manor, by the Lord of the Manor or his Steward

To the Refi-
due the De-
fendants plead
in Bar.

That *E P* sei-
zed of the
Manor of *B*
in Fee, of
which the
Premises being
Customary
Lands, are Par-
celled.

Steward for the said Manor for the time being, to whatsoever Person or Persons willing to take the same in Fee simple or otherwise, at the Will of the Lord, according to the Custom of the said Manor: And the said *Edward* being so seized of the said Manor, whereof, &c. in the Form aforesaid, He the said *Edward*, before the said Time when, &c. enfeoffed one *Thomas Paston*, Esq; his Son, and *Mary* his Wife, of the said *Manor*, with the Appurtenances, whereof, &c. to have and to hold to the said *Thomas* and *Mary*, and the Heirs of the said *Thomas* for ever; by Virtue of which Feoffment he the said *Thomas* was seized of the said *Manor*, with the Appurtenances, whereof, &c. in his Demesne, as of a Fee; and the said *Mary* in her Demesne, as of a Freehold, for the Term of her Life: and being so seized, he the said *Thomas* afterwards and before the said Time when, &c. (namely) at a Court of the said Manor of the said *Thomas*, held at the said Manor, on the 6th Day of *Fee*.

That he enfeoffed *T P* his Son in Fee, and *M* his Wife for Life.

January, in the 6th Year of the Reign of his present Majesty, by one *Thomas Blofield*, Gentleman, then Steward to the said *Thomas Paston* of his said Manor, by a Copy of the Court Rolls of that Manor, granted to the said *Barnard* the said fifteen Acres of Land,

M with

Who granted to the Defendant *Barnard* the Premises by Copy of Court Roll in

Precedents of the

with the Appurtenances (amongst other Things), to *have* and to *hold* to the said *Barnard* and his Heirs for ever: By Virtue of which Grant, afterwards and before the Time when, &c. he the said *Barnard* entered into the said fifteen Acres of Land, with the Appurtenances, and was possessed thereof in his Demesne as of a Fee, at the Will of the Lord, according to the Custom of the Manor aforesaid: And afterwards and before the said Time when, &c. he the said

That *TP* died
and *M* became
Tenant for
Life.

Thomas Paston died at *Binham* aforesaid, and the said *Mary* survived him, and kept herself within the said Manor, with the Appurtenances, whereof, &c. and was sole seized thereof in her Demesne, as of a Freehold, for the Term of her Life, by Right of Survivorship; and being so seized thereof, and the said *Barnard* being seized of the said fifteen Acres of Land, with the Appurtenances, in the manner aforesaid, she the said *Mary* afterwards and before the said Time

Who entered
into the Pre-
mises upon the
Possession of
the Defendant.

when, &c. entered into the said fifteen Acres of Land, with the Appurtenances, in which, &c. upon the Possession of the said *Barnard*, and drove out and removed the said *Barnard* from his Possession thereof; and the said *Barnard* being so driven out and removed by the said *Mary*, she the said *Mary* afterwards and before the said Time when,

when, &c. (namely) on the said seventeenth Day of *December*, in the said sixth Year aforesaid, at *Binham* aforesaid, demised to the said *John Paston* the said fifteen Acres of Land, with the Appurtenances, in which, &c. to hold to the said *John Paston*, from the said *Feast of All Saints* then last past, unto the full End and Term of three Years from thence next ensuing, and fully to be compleat and ended; by Virtue of which Demise he the said *John* entered into the said fifteen Acres of Land with the Appurtenances, in which, &c. and was thereof possessed; upon which Possession thereof of the said *John*, he the said *Barnard* afterwards (to wit) at the said Time, when, &c. in his own Right; and the said *W*, as Servant to the said *Barnard*, and by his Command, at the same time when, &c. re-entered into the said fifteen Acres, with the Appurtenances, claiming the Estate of the said *Barnard* therein, and ejected the said *John Paston* from his said Farm, as it was lawful for them to do: And this they are ready to verify; whereupon they pray Judgment, whether the said *John* ought to have his said Action thereupon against them, &c.

And demised
to the Plaintiff.

Who entered
and was pos-
sessed.

Until the
Defendants
entered and
ejected him,
claiming the
Estate of one
of the Defen-
dants.

Replication,
confessing that
EP was seized
of the Manor
of B, whereof,
&c. in Fee.

And the said *John* replies, That he (notwithstanding any thing above al- leged) ought not to be precluded from having his laid Action against them, be- cause he pleads, That true it is that long before the Time of committing the said Trespass and Ejectment, and long be- fore the Time that the said *Mary* had any Estate in the said fifteen Acres of Land, with the Appurtenances, in which, &c. the said *Edward Paston* was seized of the said Manor of *Binham*, with the Appurtenances, in the said County, whereof the said fifteen Acres of Land, with the Appurtenances, in which, &c. for the whole Time aforesaid, 'till the first Day of *May*, in the sixth Year of the Reign of his said late Majesty King *George* the First, were parcel in his Demesne as of a Fee, and that the said fifteen Acres of Land, with the Appur- tenances, for the whole Time aforesaid, until the said first Day of *May*, in the said sixth Year, were Customary Lands of the said Manor, and demised and de- misable by Copy of the Court Rolls of the Manor aforesaid by the Lord of the said Manor, or by his Steward of the Court for the time being, to any Person or Persons whatsoever willing to take the same in Fee Simple or otherwise, at the Will of the Lord, according to the Custom of the Manor aforesaid: And the

And that the
Premises were
Customary
Lands.

the said *Edward* being so seized of the said Manor, with the Appurtenances in Form aforesaid, he the said *Thomas Paston* afterwards and before the said time of committing the said Trespass and Ejectment, (namely) on the first Day of *June*, in the said sixth Year, entered ^{And that *TP*} into the said Manor, with the Appurte- ^{entered and} ^{disseised his} ^{Father.} nances whereof, &c. upon the Possession of the said *Edward* thereof, and unjustly and without Judgment disseised the said *Edward* thereof, whereby the said *Thomas* was seized of the said Manor, with the Appurtenances, whereof, &c. in his Demesne, as of a Fee, by Disseisin; and being so seized thereof by that Disseisin, he the said *Thomas* afterwards and before the said Time of committing the said Trespass and Ejectment, (namely) at the Court of the said *Thomas* of the Manor aforesaid, held at that Manor on the sixth Day of *Ja-
nuary*, in the sixth Year aforesaid, by the said *Thomas Blofield*, then Steward to the said *Thomas Paston* of his Manor aforesaid, by Copy of the Court Rolls of that Manor, granted to the said *Barnard* the aforesaid fifteen Acres of Land, with the Appurtenances, to have and to hold to the said *Barnard* and his Heirs for ever: By Virtue of which Grant, he the said *Barnard*, before the said Time when, &c. entered into the said fifteen ^{Who entered} ^{and was seized} Acres

Acres of Land, with the Appurtenances, and was seized thereof in his Demesne as of a Fee, at the Will of the Lord, according to the Custom of the Manor aforesaid: And the said *Barnard* being so seized thereof, and the said *Thomas* being seized of the Manor aforesaid, with the Appurtenances, &c. in Form aforesaid, he the said *Edward Paston* afterwards and before the said Time of committing the Trespass and Ejection aforesaid, (namely) on the first Day of *May*, in the sixth Year aforesaid re-entered into the said Manor, with the Appurtenances, whereof, &c. by Means whereof the said *Edward* became seized of the Manor aforesaid, whereof, &c. in his Demesne, as of a Fee, as in his first and former Estate; and being so seized thereof, he the said *Edward* afterwards and before the said Time of committing the Trespass and Ejection aforesaid, (namely) on the said first Day of *May*, in the sixth Year aforesaid,

And Enfeoffed *TP* in Fee, and *Mary* his Wife, of the said fifteen Acres of Land, in which, &c. to hold to them and the Heirs of the said *Thomas* for ever: By Virtue of which said Feoffment they the said *Thomas* and *Mary* became seized of the said fifteen Acres of Land, with the Appurtenances, in which, &c. (namely) the said *Thomas* in

in his Demesne, as of a Fee, and the said *Mary* in her Demesne, as of a Freehold, for the Term of the Life of the said *Mary*; and they the said *Thomas* and *Mary* being so seized thereof, he the said *Thomas Paston* afterwards and before the Time when, &c. died at *Binham* aforesaid, and the said *Mary* survived him, and held the said fifteen Acres of Land, with the Appurtenances, and was seized thereof in her Demesne as of a Freehold for the Term of her Life by Right of Survivorship; and being thus seized thereof, he the said *Barnard* afterwards and before the said Time when, &c. entered into the said fifteen Acres of Land, with the Appurtenances, in which, &c. claiming his said Estate by Copy of the Court Roll aforesaid, and was possessed thereof until the said *Mary* afterwards and before the Time of committing the said Trespass and Ejectment, re-entered into the said fifteen Acres of Land, with the Appurtenances, in which, &c. upon the Possession thereof of the said *Barnard*, and drove out and removed the said *Barnard* from the Possession thereof; and he the said *Barnard* being thus driven out and removed by the said *Mary*, he the said *Barnard* afterwards and before the said Time when, &c. (namely) on the said seventeenth Day of December, in the

That T died
and M survived
him.

And that M be-
came seized for
Life by Survi-
vorship.

That the De-
fendant en-
tered and was
possessed,
Until M re-
entered upon
his Possession,
and expelle^d him.

And after-
wards demised
the Premises to
the Plaintiff.

Precedents of the

tenth Year aforesaid, at *Binbam* aforesaid, demised the said fifteen Acres of Land, with the Appurtenances, in which, &c. to the said *John Paston* to hold to the said *John* from the said Feast of *All Saints* then last past, until the End and Term of three Years from thence next ensuing and fully to be compleat and ended; by Virtue of which Demise, the said *John* afterwards and before the said Time when, &c. entered into the said fifteen Acres of Land, with the Appurtenances, in which, &c. and was possessed thereof; and the said *John* being thereof thus possessed, they the said *Barnard* and *William* afterwards, (namely) on the 11th Day of *March*, in the tenth Year aforesaid, with Force and Arms, &c. entered into the said fifteen Acres of Land, with the Appurtenances, demised to the said *John* by the said *Mary* in the manner as above, for the

Who entered
and was pos-
sessed.

And the De-
fendant enter'd
and ejected
them.

And traverses
the Feoffment
set forth in the
Bar.

Term aforesaid which is not yet expired, and ejected the said *John* from his said Farm, as he doth above complain against them. *Without that*, That the said *Edward* enfeoff'd the said *Thomas Paston* and *Mary* of the said Manor, as the said *Barnard* and *William* hath above alledged: And this he is ready to verify, wherefore in as much as the said *Barnard* and *William* do above acknowledge the committing the said Trespass and Eject-

Ejectment, he the said *John* prays Judgment, and the Possession of the said Term of and in the said fifteen Acres of Land, with the Appurtenances, yet to come and unexpired, and his Damages occasioned by the said Trespass and Ejectment to be awarded to him, &c.

To which there was a Demurrer, and the Causes were these, viz. That the Traverse was insufficient and the Plea double.

This Case is reported in Hetley's Reports, p. 5. and Hutton, 102.

The Declaration sets forth a Demise by an Indenture dated the twenty-sixth Day of September, in the thirteenth Year of the Reign of King James the First, by George Crosland and an Ouster of the Plaintiff upon the same Day.

P L E A.

And the said *William* and *William*, by *Simon Wiseman* their Attorney, come and defend the Force and Injury, when, &c. and as to coming with Force and Arms, they plead, That they are in no wise guilty thereof, and thereof they put themselves upon the Country, and the said *Matthew* doth likewise the same: And as to the residue of the said Trespass and Ejectment above supposed to have

PLEA,
As to Part, not
Guilty.

Precedents of the

As to the Refi-
due the Defen-
dants plead,
That Queen
Elizabeth was
seized in Fee in
Right of her
Crown.

And by her
Letters Patents
demised to *T.
Matthew*,

For twenty-
one Years.

have been committed, they say, That the said *Matthew* ought not to have his said Action against them thereupon, because they aver, That long before the said Time when the said *Trespass* and *Ejectment* are supposed to have been committed, our late Sovereign Lady Queen *Elizabeth* was seized of the said Mill, with the Appurtenances (amongst other Things) in her Demesne, as of a Fee, in Right of her Crown of *England*, and being so seized, she the said late Queen before the said Time when, &c. (*to wit*) on the thirteenth Day of *August*, in the thirty-sixth Year of her Reign, by her *Letters Patents* under the Great Seal of *England*, bearing Date the same Day and Year, for the Consideration expressed and contained in the said *Letters Patents*, granted and to farm let the said Mill, with the Appurtenances, to one *Thomas Matthew*, to have, hold, and enjoy, to the said *Thomas Matthew*, his Executors and Assigns, from the making of the said Letters Patents, until the End, and for and during the Term of twenty one Years, and fully to be compleat and ended: By Virtue of which Demise the said *Thomas* entered into the said Mill, with the Appurtenances, and was possessed thereof; and being so possessed thereof, and the said late Queen being seized of the *Reversion* thereof in the manner afore-

aforesaid, she the said Queen afterwards ^{That the Queen died seized of} and before the said Time when, &c. ^{the Reversion.} (*that is to say*) on the twenty-fourth Day of *March*, in the forty-fifth Year of her Reign, departed this Life at *Westminster* aforesaid, seized of the aforesaid Reversion, without having any Issue of her Body, after whose Decease the said Reversion, with the Appurtenances, ^{That it descended to King James. 1.} descended to his present Majesty as Cousin and Heir to the said late Queen *Elizabeth*, whereby our said Sovereign Lord the King that now is became seized of the Reversion aforesaid in his Demesne, as of a Fee, in Right of his Crown of *England*; and he being thus seized thereof, his said present Majesty afterwards and before the said Time when, &c. (*namely*) on the nineteenth Day of *July*, in the thirteenth Year of his Reign, by ^{That King James by his Letters Patents} his Letters Patents sealed with his Great Seal of *England*, bearing Date at *Westminster*, the same Day and Year, which the said *William* and *William* bring here into this Court, for and in consideration of the Sum of forty Pounds of lawful Money of *England* paid to our said Sovereign Lord the King, at the Receipt of his Exchequer at *Westminster*, by his Majesty's faithful and loving Subject *Christopher Bambridge* Gentleman, and of the yearly Rent reserved in the same Letters Patents, as also for divers other good

Precedents of the

good Causes and Considerations then specially moving our said Sovereign Lord the King, out of his special Grace, and from his certain Knowledge and mere Motion, demised, granted, and to farm let, to the said *Christopher Bambridge* the said Mill, with the Appurtenances, (*amongst other things*) to have, hold, and enjoy the said Mill, with the Appurtenances, (*amongst other things*) to the said *Christopher*, his Executors and Assigns, immediately after the Expiration, Determination, Surrender, or Forfeiture of the said Estate and Interest of the said *Thomas Matthew*, his Executors or Assigns, of and in the Premises, or from the Time when the Premises should become into the Hands and Disposition of his said Majesty, his Heirs or Successors, whether it were by Death, Expiration, Determination, Surrender, or Forfeiture, or by any other Means whatsoever, to the End of the said Term of forty Years then next following, and fully to be compleat and ended, yielding therefore yearly to our said Sovereign Lord the King and his Successors twenty Pounds, and four Pence of lawful Money of *England*, to be paid at the Feasts of *Saint Michael the Archangel* and the *Annunciation of the Blessed Virgin Mary*, at the Receipt of his said Majesty's Exchequer, or to the Hands of the

the Bailiff's or Receivers of the Premises for the Time being, by equal Portions, during the said Term, as by the said Letters Patents last above specified may amongst other Things more fully appear; by Virtue of which Demise the said *Christopher* was possessed of the Interest of the said Term of forty Years of and in the said Mill, with the Appurtenances; and being so possessed thereof, the said Lease made by the said late Queen *Eliz.* That the Demise to *Matthews* expired.

Elizabeth to the said *Thomas Matthew* of the Mill aforesaid, with the Appurtenances, in the Manner aforesaid afterwards and before the said Time when, &c. (namely) on the thirtieth Day of *August*, in the thirteenth Year of the Reign of his said present Majesty, ended and expired; by means whereof the said *Christopher Bambridge*, on the first That *Bambridge* entered and was possessed.

Day of *September*, in the thirteenth Year of the Reign of his present Majesty, entered into the said Mill, with the Appurtenances, and was thereof possessed; and being so possessed thereof, he the said *Christopher* afterwards and before the said Time when, &c. (namely) on the first Day of *September*, in the thirteenth Year aforesaid, demised to the said *William* and *William* the said Mill, (amongst other things) to have and to hold to the said *William* and *William*, as long as both Parties should please; And demised to the Defendants.

by

by Virtue of which Demise, they the said *William* and *William* entered into the said Mill, with the Appurtenances, and were thereof possessed; and being thus possessed thereof, he the said *George Croftland* (*the Plaintiff in the Ejectment*) before the said Time when, &c.

That the Lessor entered upon the Defendants, and expelled them.

*That the Plaintiff entered into the said Mill, with the Appurtenances, upon the Possession of the said William and William, and drove out and removed them from the Possession thereof, and became seized in his Demesne, as of a Fee; and the said George being thereof thus seized afterwards (namely) on the twenty-ninth Day of September, in the thirteenth Year of the Reign of his present Majesty, at *Bolla* aforesaid, by his said Indenture, demised to the said *Matthew* the Mill aforesaid, with the said Appurtenances, *to have and to hold* to him and his Assigns, from the sealing and Delivery of the said Indenture, until the End and Term of five Years aforesaid from thence next ensuing, and fully*

And demised to the Plaintiff.

That the Plaintiff entered and was possessed, till the Defendant entered and ejected him, as it was lawful for him to do.

That the Plaintiff entered into the said Mill, with the Appurtenances, and was possessed thereof, and being thereof thus possessed, they the said William and William afterwards, at said the Time when, &c. entered into the Mill aforesaid, with the Appurtenances, upon

upon the Possession of the said *Matthew*, and ejected him from the Farm aforesaid, as it was lawful for them to do: And this they are ready to verify; whereupon they pray Judgment, whether the said *Matthew* ought to have his said Action thereupon against them, &c.

Jo. Shyrley.

REPLICATION.

And the said *Matthew* replies, That he, (notwithstanding any thing above alledged) ought not to be precluded from having his said Action against them, &c. because he says, 'That right and true it is, that the said Lady *Elizabeth* late Queen of *England*, was (amongst other Things) seized of the aforesaid Mill, with the Appurtenances in her Demesne, as of a Fee, in Right of the Crown of *England*; and she being so seized thereof, she the said late Queen, before the said Time, when, &c. to wit, on the thirtieth Day of *August*, in the thirty-sixth Year of her Reign, by her Letters Patents sealed with her Great Seal of *England*, bearing Date at *Westminster*, the same Day and Year demised, set, and to farm let the said Mill, with the Appurtenances, (amongst other things) to the said *Thomas Matthew*, to have, hold, and enjoy to the said *Thomas* and his

Replication.
The Plaintiff
confesteth the
Seisin of the
Queen,

And that she
demised to
Matthew.

his Assigris, from the making of the said *Letters Patents*, until the End and for the Term of twenty-one Years from thence next ensuing, and fully to be compleat and ended; by Virtue of which Demise, the said *Thomas* entered into the said Mill, with the Appurtenances, and was possessed thereof; and the said late Queen being thus seised of the Reversion thereof in the manner aforesaid, she the said late Queen afterwards and before the said Time when, &c. (namely) on the said twenty-fourth Day of *March*, in the forty-fifth Year of her Reign, departed this Life at *Westminster* aforesaid, seised of the Reversion aforesaid, without having Issue of her Body; after whose Decease the Reversion aforesaid, with the Appurtenances, descended to his said present Majesty, as Cousin and Heir to the said late Queen *Elizabeth*, whereby our said Sovereign Lord the King that now is became seized of the Reversion aforesaid in his Demesne, as of a Fee, in Right of his Crown of *England*, as the said *William* and *William* have above alledged in their Plea: But the said *Matthew* farther pleads by way of Reply, That our said Sovereign Lord the King being thus seised of the Mill aforesaid, with the Appurtenances, his said present Majesty afterwards and before the said Time when, &c. and before the said

That he entered and was possessed.

And also confesses the Demise of the Crown, and the Descent to King *James*.

said Demise above supposed to have been made to the said *Christopher Bambridge*, (namely) on the thirtieth Day of September, in the seventh Year of his Reign, by his *Letters Patents* under his Great Seal of *England*, and brought into this Court bearing date at *Westminster* the same Day and Year, demised, granted, bargained and sold to *Edward Ferrers* and *Francis Philips*, the said Mill, with the Appurtenances (amongst other things) to have and to hold to the said *Edward* and *Francis*, their Heirs and Assigns for ever; by Virtue of which said *Letters Patents* they the said *Edward* and *Francis* were seized of the said Mill, with the Appurtenances in their Demesne, as of a Fee, and the said *Thomas Matthew* was possessed of the said Mill, with the Appurtenances, for his Term aforesaid; and they the said *Edward* and *Francis* being thus seized of the Mill aforesaid, with the Appurtenances, they the said *Edward* and *Francis* afterwards and before the said Time when, &c. (to wit) on the eighth Day of November, in the seventh Year of the Reign of his said present Majesty, for a certain Sum of Money then in hand paid to the said *Edward* and *Francis*, by their Indenture bearing Date the same Day and Year, made and executed between the said *Edward* and *Francis*

N

Francis

But that King James by his Letters Patents bargained and sold the Reversion to Edward Ferrers and Francis Philips.

Who by Indenture bargained and sold to Robert Marsh and Philip Dorrell.

Precedents of the

Francis of the *one part*, and *Robert Marsh* and *Philip Dorrell* of the *other part*, and within six Months then next following duly inrolled of Record in his Majesty's High Court of Chancery at *Westminster*, in the County of *Middlesex*; which *other part* thereof (sealed with the Seals of the said *Robert* and *Philip*) he the said *Matthew* brings into this Court, the Date whereof is the same Day and Year, granted, bargained and sold to the said *Robert* and *Philip*, the Mill aforesaid, with the Appurtenances, to *have hold* and *enjoy* the said Mill, with the Appurtenances, to them the said *Robert* and *Philip*, their Heirs and Assigns for ever; *by virtue* of which Grant and Inrollment, as aforesaid, they the said *Robert* and *Philip* were seized of the Reversion aforesaid of and in the said Mill, with the Appurtenances in their Demesne, as of a Fee, and the said *Thomas Matthew* was possessed of the said Mill, with the Appurtenances, for his Term aforesaid; and they the said *Robert* and *Philip* being thus seized of the Reversion of the said Mill in the manner as above, and the said *Thomas* being thus possessed of the said Mill, with the Appurtenances, they the said *Robert* and *Philip* afterwards and before the said Time when, &c. (*namely*) on the twenty eighth Day of *November*,

That *Robert Marsh* and *Philip Dorrell* by Indenture enroll'd bargain'd and sold the Reversion to *HH* and *AW*.

in

in the tenth Year of the Reigne of his present Majesty, for a certain Sum of Money paid to the said *Robert* and *Philip*, by their Indenture bearing Date the same Day and Year, and executed between the said *Robert* and *Philip* of the one part, and *Henry Hill* and *Ambrose Wiggleworth* of the other part, and duly enrolled of Record in his said Majesty's High Court of Chancery at Westminster, within six Months then next following; which other part (sealed with the Seal of the said *Robert* and *Philip*) he the said *Matthew* brings into this Court, bearing Date the Day and Year last above mentioned, granted, bargained and sold to the said *Henry* and *Ambrose* the Mill aforesaid, with the Appurtenances, to have hold and enjoy the Mill aforesaid, with the Appurtenances, to the said *Henry* and *Ambrose*, their Heirs and Assigns for ever: by virtue of which Grant and Enrollment, they the said *Henry* and *Ambrose* were feized of the Reversion aforesaid, with the Appurtenances in their Demesne as of a Fee, and the said *Thomas Matthew* was possessed of the said Mill, with the Appurtenances, for his Term aforesaid; and they the said *Henry* and *Ambrose* being thus seized of the Reversion of the aforesaid Mill, and the said *Thomas* being thus possessed of the said Mill, with the

That they the
said *R H* and
AW by their
Indenture in-
rol'd bargain'd
and sold the
Reversion to
the Lessor of
the Plaintiff

Precedents of the

That *Henry* and *Ambrose*
and *Ambrose*
by Indenture
inrolled bar-
gained and sold
to *George*
Crossland.

Appurtenances as aforesaid, they the said *Henry* and *Ambrose* afterwards and before the said Time when, &c. (namely) on the eleventh Day of *July*, in the eleventh Year of his said Majesty's Reign, for a certain Sum of Money then in hand paid to the said *Henry* and *Ambrose*, by their Indenture bearing Date the same Day and Year, between the said *Henry* and *Ambrose* of the *one part*, and the said *George Crossland* above specified in the Declaration aforesaid of the *other part*, and within six Months then next following duly inrolled of Record before Sir *Richard Tempest* Knight, one of his Majesty's Justices of the Peace in and for the *West Riding* in the County of *York*, assigned to keep the Peace of our said Sovereign Lord the King, in and for the said *West Riding* of the County of *York* aforesaid, and *William Cartwright* Gentleman, then Clerk of the Peace there, *the other part* of which Indentures (sealed with the Seals of the said *Henry* and *Ambrose*) he the said *Matthew* brings into this Court, the Date whereof is the same Day and Year, granted, bargained and sold to the said *George the Mill* aforesaid, with the Appurtenances, to *have hold* and *enjoy* the same to the said *George*, his Heirs and Assigns for ever; by virtue of which Grant and Inrollment, he the said *George* became

became seized of the Reversion of the said Mill, with the Appurtenances in his Demesne, as of a Fee, and the said *Thomas Matthew* was possessed of the said Mill with the Appurtenances for his Term aforesaid ; and the said *George* being thus seized of the Reversion of the Mill aforesaid with the Appurtenances, and the said *Thomas* being thus possessed of the said Mill with the Appurtenances, as aforesaid, afterwards and before the said Time when, &c. (namely) on the thirtieth Day of *August*, in the thirteenth Year of the Reign of his present Majesty, the said Demise of the Mill aforesaid with the Appurtenances, made by the late Queen *Elizabeth* to the said *Thomas Matthew* in the manner as above set forth, ended and expired ; by means whereof the said *George* afterwards, (namely) on the the twenty fourth Day of *September*, in the thirteenth Year of the Reign of his present Majesty, entered into the said Mill with the Appurtenances, and was seized thereof in his Demesne as of a Fee ; and being thus seized afterwards (to wit) on the same 29th Day of *September*, in the said 13th Year, at *Bower* aforesaid, he the said *George*, by his said Indenture bearing Date on the 26th Day of *September*, in the 13th Year aforesaid, demised to the said *Matthew* the Mill aforesaid, with

That the Demise to *Matthew* expired.

That the Lessor of the Plaintiff entered and was seized,

and demised to the Plaintiff,

Who entered
and was pos-
sessed, until the
Defendants en-
tered and
ejected him.

the Appurtenances, to have and to hold to him and his Assigns, from the Sealing and Delivery of the said Indenture, until the End and Term of five Years then next following, and fully to be compleat and ended; by virtue of which Demise, the said *Matthew* entered into the said Mill with the Appurtenances, and was possessed thereof; and being thus possessed thereof, they the said *William* and *William* afterwards at the same time when, &c. entered into the Mill aforesaid with the Appurtenances upon the Possession of the said *Matthew*, and ejected him out of his Farm aforesaid, as the said *Matthew* hath above declared against him, and this he is ready to verify; whereupon in as much as the said *William* and *William* do above acknowledge the said *Trespass* and *Ejectment*, the said *Matthew* prays *Judgment* and the Possession of his Term aforesaid, together with his *Damages* occasioned by the said *Trespass* and *Ejectment*, to be awarded to him, &c.

To this there was a Demurrer and a Joinder in Demurrer, and the Case is recited in Brownlow 131, and there an Exception was taken because the Inrollment was not made according to the Form of the Statute, because it did not appear that the Justice before whom the Deed was enrolled was a Justice of the

Peace

Peace of the County of York, but of the West Riding, and it was not alledged that the Land did lye in the West Riding: And note that the Defendant's Plea in Bar was insufficient, because the Defendant did not confess, and avoid the Count, and the Plaintiff by his Replication doth not shew any Title to the Land, because it did pass by the Inrollment, and so he had lost his Suit; and although the Bar be insufficient, yet notwithstanding the Plaintiff shall not recover.

P R E C E D E N T S
O F
S P E C I A L V E R D I C T S
I N
E J E C T M E N T.

York, *v.* Jordan.

*Hill. King William III. Roll 178. in
the Common-Pleas.*

Not Guilty
pleaded.

AND the said *John Jordan, John Mittel, and Thomas*, by *JW* their Attorney, come and defend the Force and Injury, when, &c. and plead, That they are in no wise guilty of the Trespass and Ejectment aforesaid, as the said *James* above complains against them, and thereof they put themselves upon the Country, and the said *James* does likewise the same. Therefore the Sheriff is commanded, that he cause to come hither, on the Octaves of the Purification of the Blessed Virgin Mary, twelve &c.

¶. By whom, &c. And who neither,
¶. To recognize, &c. Because as
well, &c. At which Day the Jury
between the said Parties in the said Ac-
tion were respited between them 'till
this Day (namely) in fifteen Days from
the Feast Day of *Easter* then next en-
suing, unless His Majesty's Justices as-
signed by Virtue of the Statute, &c. to
hold the Assizes in the County aforesaid,
had come before, on *Monday* the twenty
first Day of *March* then next ensuing,
at *Maidstone* in the County aforesaid;
And now here at this Day, as well the
said *James*, as the said *John Jordan*,
John Mittel and *Thomas*, by their said
Attorneys appeared, and the said Ju-
stices of Assize before whom, &c. re-
turned hither their Record in these
Words: *Afterwards*, at the Day and The Potes.
Place within contained, as well the
within written *James York*, as the with-
in written *John Jordan*, *John Mittel*
and *Thomas*, by their Attorneys within
contained, came before Sir *John Holt*
Knight, his Majesty's Chief Justice as-
signed to hold Pleas before the King
himself, *Eldred Lancelot Lee* associated
for this Turn to the said Sir *John Holt*,
and Sir *Edward Nevill* Knight, one
of the Justices of his said Majesty's Bench,
and Sir *Nicholas Lechmere* Kt. one of his
Majesty's Barons of the Exchequer, his

Ma-

Precedents of Special Verdicts

Majesty's Justices appointed to hold the Assizes in the County of Kent, by virtue of the Statute, &c. (the presence of the said Edward Nevill and Nicholas Leckmere not being expected) by virtue of his Majesty's Writ of *Si non omnes*, &c. and the Jurors of the Jury whereof mention is within made, being summoned likewise, appeared; who being chosen, tried and sworn to declare the Truth of the within Contents, declare upon their Special Verdict *Seizm in Fee.*

That long before the within written Time when the within mentioned Trespass and Ejectment is within supposed to have been committed, one John Strongbill Esquire was seized of the Tenements with the Appurtenances within written, mentioned in the Declaration within written (*amongst other things*) in his Demesne as of a Fee, having Issue Henry his Son and Heir apparent, mentioned in his last Will; and being thereof thus seized, on the seventeenth Day of June, in the Year of our Lord One thousand six hundred and sixty five, made his last Will and Testament in Writing, and thereby gave and devised amongst other Things, in the Words following,

A Devise to his Son Henry for Life.

(to wit,) *Imprimis, I give and bequeath to my Son Henry Strongbill, during his natural Life, all and every my Messuages, Lands, Tenements and Hereditaments whatsoever, or of what Sort or Kind*

Kind soever, situate lying and being in the Towns, Parishes, Villages or Hamlets of Lud, New Romney, New Church, Hope and Riverton, or any of them, or elsewhere wheresoever in the County of Kent (whereroof the said Tenements with the Appurtenances mentioned in the said Declaration are parcel) and after the Decease of my said Son Henry, I give and bequeath all and singular my said Lands, Messuages and Premises, to the first Issue Male of the Body of my said Son Henry lawfully to be begotten, and to the Heirs of the Body of such Issue Male lawfully begotten; and if it shall happen that such Issue Male shall dye without Heirs of his Body begotten as aforesaid, I in like manner give and bequeath all and every my said Messuages, Lands, Tenements and Hereditaments aforesaid, to the second Issue Male of the Body of my said Son Henry lawfully to be begotten, and to the Heirs of the Body of such second Issue Male; and for Default of such Heirs, to the third, fourth, fifth, sixth, and seventh, and every Issue Male of the Body of my said Son Henry begotten as aforesaid, and the respective Heirs of their respective Bodies lawfully begotten, one after another, as they shall be in Seniority of Age, one before the other, and the

Remainder to
the first Issue
Male of Henry,
Then to the
Heirs of the
Body of such
Issue Males,

Elder

Precedents of Special Verdicts

Elder still to be in order before the Younger: And if it shall happen my said Son Henry shall dye without Issue Male of his Body begotten as aforesaid, I hereby give and bequeath all and every of my said Messuages, Lands, Tenements, Hereditaments and Premises, to the Heirs Female of the Body of my said Son Henry lawfully begotten as aforesaid, and the Heirs of the Body of such Issue Female lawfully to be begotten, to be equally divided among such Issue Female, and to their Heirs for ever. But if it shall happen my said Son Henry do dye without any Issue Male or Female, then my Will and Meaning is, and I do give and bequeath all and every my said Messuages, Lands, Tenements, Hereditaments, and Premises, to be equally divided among my three Daughters, Judith Stronghill, Bridget Stronghill, and Constance Stronghill, and to the Heirs of their Bodies lawfully to be begotten for ever; as it doth by the said last Will produced in Evidence to the Jury aforesaid more

That the Testator died seized, plainly appear: And the Jurors aforesaid do upon their said Oath farther declare, That the said John Stronghill afterwards (that is to say) on the first Day of September, in the Year of our Lord one thousand six hundred and sixty five, died seized of such his Estate of and

and in the Tenements aforesaid, with the Appurtenances, (whereof the Tenements aforesaid mentioned in the said Declaration are parcel), after whose Decease he the said *Henry Stronghill* entered into the said Tenements with the Appurtenances, (whereof the said Tenements with the Appurtenances mentioned in the said Declaration are parcel,) and was seized thereof as the Law requires: And the said Jurors do upon their said Oath farther declare, That he the said *Henry Stronghill* being seized as aforesaid afterwards and before he had any Issue of his Body lawfully begotten, (*to wit*) on the twenty third Day of *October*, in the Year of our Lord one thousand six hundred and seventy six, by an Indenture executed between the said *Henry Stronghill* of the one Part, and *Thomas Short* and *William Norris* of *London* Gentleman of the other Part, bearing Date the same Day and Year, in consideration of five Shillings mentioned in the Indenture aforesaid, to be paid by the said *Thomas Short* and *William Norris* to him the said *Henry Stronghill*, he the said *Henry Stronghill* demised to the said *Thomas Short* and *William Norris* the Tenements aforesaid mentioned in the said Declaration, *to have and to hold* to the said *Thomas Short* and *William Norris*, from the Day next before the Day of the Date of the Inden-

After whose
Death it de-
scended to
Henry, who
entered and
was seized,

and demised
for a Year,

Precedents of Special Verdicts

And afterwards released the Premises to *Short and Norris*.

Indenture aforesaid, for one whole Year from thence next ensuing, as it doth by the said Indenture produced in Evidence to the said Jurors more fully appear, by Virtue whereof the said *Thomas Short* and *William Norris* entered into the Tenements aforesaid with the Appurtenances, and were thereof possessed for the Term aforesaid, and being so possessed thereof, afterwards (to wit) on the twenty fourth Day of the same Month of *October*, in the Year of our Lord last abovementioned, by an Indenture quadrupartite made between him the said *Henry Strongbill* of the first Part, the said *Thomas Short* and *William Norris* of the second Part, *William Low of Chiswick* in the County of *Middlesex* Gentleman of the third Part, and *Judith Strongbill* of *London* Widow, Relict of the said *John Strongbill*, and Mother of the said *Henry Strongbill*, of the fourth Part, bearing Date the same Day and Year; he the said *Henry Strongbill* granted, devised, released, quit, claimed and confirmed to the said *Thomas Short* and *William Norris* and their Heirs, the Tenements aforesaid with the Appurtenances mentioned in the Declaration aforesaid, then being in their actual Possession, *to have and to hold* to the said *Thomas Short* and *William Norris* and their Assigns to the use of the said *Judith Strongbill* and her Assigns for

To hold to them and their Assigns to the use of *Judith Strongbill*.

for and during the Term of her Natural Life, and after the Decease of the said Judith, to the use of the said Henry Strongbill, his Heirs and Assigns for ever; and the said Jurors do upon their said Oath further declare, that this following Clause is contained in the said last mentioned Indenture, that is to say,

And for the better Corroboration of these Presents, and for the barring, cutting off and wholly extinguishing of all and all manner of Estates, Tails, and other Estates and Remainders limited, made, done or executed, of in or concerning the Premises or any Part thereof, by the said John Strongbill deceased, or by any other Person or Persons, It is coenanted concluded and fully agreed by and between all the said Parties to these Presents, that the said Thomas Short and William Norris and their Heirs, shall and will permit and suffer the said William Lowe to bring and pursue against them the said Thomas Short and William Norris one or more Writ or Writs of Entry Sure diffeisim in le Post, returnable before his Majesty's Justices of the Court of Common Pleas at Westminster, before the End of this present Michaelmas Term, by which he the said William Lowe, shall demand against them the said Thomas Short and William Norris the

And for cutting off the Estate's Tail, Short and Strongbill covenant that a Preceipe shall be brought against them,

Precedents of Special Verdicts

the said Messuages, Closes, Lands, Tenements, Good-Grounds, and Premises aforesaid, by such Name or Names, Quantities, Qualities, and other Distinctions and Descriptions, as to the said William Lowe shall seem meet; to

which said Writ or Writs the said Thomas Short and William Norris shall appear gratis, or by their Attorney in that behalf to be lawfully authorized, and shall enter into a Warranty for the said Premises, and shall vouch over the common Vouchee, which common Vouchee shall also appear to the Warranty for the said Premises, and after make Default, so that a good and perfect common Recovery, with double Voucher, may be duly had and executed of the said Messuages Lands and Tenements, according to the usual and common Order and Form of common Recoveries for Assurance of Lands in such Cases used:

And lastly it is agreed by all the said Parties to these Presents, and hereby declared to be their true Intent and Meaning, that the said common Recovery so or in any other Manner to be had and suffered of the Premises or any Part thereof, shall be and enure, and shall be construed deemed and taken to be and enure to the Uses Intents and Purposes herein before mentioned and declared, and to and for no other Use Intent

The Uses.

That Judgts
entered,

*Intent or Purpose whatsoever; As it doth by the said Indenture produced in Evidence to the said Jurors more fully appear: By virtue of which Indentures of Lease and Release last mentioned, she the said Judith entered into the said Tenements, with the Appurtenances mentioned in the said Declaration, and was thereof possessed, as the Law requires. And the said Jurors do upon their said Oath farther declare, that in pursuance of the said last mentioned Indenture, he the said William Lowe Gentleman, on the twenty third Day of the same Month of October, sued out of the Court of Chancery of his late Majesty Charles the Second, late King of England, &c. against them the said Thomas Short and William Norris his said Majesty's Writ of Entry *Sur disseisin in le-post*, returnable before his said Majesty's Justices of the Court of Common Pleas at Westminster in the County of Middlesex, on the morrow of Saint Martin then next following, by which said Writ he the said William Lowe demanded against the said Thomas Short and William Norris (amongst other things) the Tenements aforesaid with the Appurtenances mentioned in the Declaration aforesaid, by the Names of Three Messuages, three Gardens, ten Acres of Marsh, with the Appurtenances, in New*

*And then the
Jury find the
Recovery,
wherein Henry
vouched,*

O Rumney,

Rumney, Old Rumney, Ludd, Rumney, Marsh, New Churcb, Hope All Saints, and Riverton, as his Right and Inheritance, and wherein they the said *Thomas Short and William Morris* had no Entry, unless after a Disfeisit, which *Hugh Hunt* unjustly and without a Judgment made thereon, to the said *William Lowe*, within thirty Years, &c. and whereupon he declared that he was feized of the said Tenements, with the Appurtenances in his Demesne, as of a Fee and Right, in Time of Peace, in the Reign of our late Sovereign Lord the King, by taking the Profits to the Value, &c. and into which, &c. and thereupon he brought his Suit, &c. And the said *Thomas and William Norris* personally came and defended their Right, when, &c. and called thereto to Warranty the said *Henry Stronghill*, who was then personally present in Court, and freely warranted to them the Tenements aforesaid, with the Appurtenances; and thereupon the said *William Lowe* demanded against the said *Henry Stronghill* Tenant by his Warranty the Tenements aforesaid with the Appurtenances in the manner aforesaid, and whereupon he declared he was feized of the Tenements aforesaid, with the Appurtenances in his Demesne, as of a Fee and Right, in time of Peace, in the Reign of our late Lord the King, by taking the Profits to the Value,

Value, &c. and into which, &c. and thereupon he brought his Suit, &c. And the said *Henry Tenant* by his Warranty defended his Writ, when, &c. and further vouched *John Wheeler* to warranty thereupon, who was likewise personally present in Court, and freely warranted to him the Tenements, with the Appurtenances, &c. and thereupon the said *William Lowe* demanded against the said *John Wheeler Tenant*, by his Warranty, the Tenements aforesaid, with the Appurtenances in the manner aforesaid, with the Appurtenances, &c. and thereupon he declared that he himself was seized of the said Tenements, with the Appurtenances in his Demesne, as of a Fee and Right, in Time of Peace, in the Reign of our late Lord the King, by taking the Profits thereof to the Value, &c. and into which, &c. and thereupon he brought his Suit, &c. And the said *John Wheeler Tenant*, by his Warranty defended his Right, when, &c. and pleaded, that the said *Hugh* had not disfized the said *William Lowe* of the Tenements aforesaid, with the Appurtenances, as he the said *William* had before supposed by his Writ and Declaration aforesaid, and thereof he put himself on the Country, &c. and the said *William Lowe* craved Leave to imparl thereto, and it was granted to him, &c. and afterwards the said *William Lowe* then came back

O 2

again

Who vouches
over the com-
mon Vouthee.

Precedents of Special Verdicts

again into the Court that same Term in his own Person, and the said *John Wheeler*, although solemnly called, came not back, but departed in despite of the Court, and made Default, therefore it was adjudged, that the said *William Lowe* recover his Seisin against the said *Thomas* and *William Norris*, of the Tenements aforesaid, with the Appurtenances, and that the said *Thomas* and *William Norris* should have of the Land of the said *Henry* to the Value, &c. and that the said *Henry* should have of the Land of the said *John Wheeler* to the Value, &c. and that the said *John Wheeler* should be then amerced, &c. and thereupon the said *William Lowe* prayed a Writ of our said Sovereign Lord the King to be directed to the Sheriff of the County aforesaid, to cause him to have full Seisin of the Tenements aforesaid, with the Appurtenances, and it was then granted to him, returnable forthwith, &c. afterwards, to wit, on the twenty eighth Day of November, that same Term the said *William Lowe* then came personally into Court, and the Sheriff, to wit, Sir *John Cutler* Knight and Baronet then returned,

The Award of the Writ of Seisin.

The Return.

That he, by Virtue of the Writ to him directed, on the twenty third Day of November then last past, caused the said *William Lowe* to have full Seisin of the Tenements aforesaid, with the Appurtenances, as by the Writ he was commanded

ed to do : And the said Jurors do farther upon their said Oath declare, That afterwards, to wit, on the first Day of *May*, in the Year of our Lord one thousand six hundred and seventy eight, and not before, the said *Henry Strongbill* had ^{That Henry had} ~~Issue~~ the Plaintiff's Lessor. his Body lawfully begotten, *to wit*, the within named *Richard Strongbill* the Lessor of the Plaintiff, his first-born and only Son ; and the said Jurors do upon ^{That Judith} ~~the~~ died seized. their said Oath farther declare, That the said *Judith* afterwards, *to wit*, on the first Day of *May*, in the Year of our Lord one thousand six hundred and seventy nine, died seized, as aforesaid, after whose Death the said *Henry* entered into the the said Tenements, with the Appurte- ^{That Henry en-} ~~tered, and bar-~~ ^{gained and sold} ~~the Premises to~~ ^{Sympson.} nances, whereof, &c. and was seized thereof as the Law requires ; and afterwards, *to wit*, on the tenth Day of *August*, in the Year of our Lord one thousand six hundred and eighty one, he the said *Henry* being seized as aforesaid, by an Indenture executed between the said *Henry Strongbill* of the one Part, and *Sir John Simpson* of the *Inner Temple, London*, Knight, of the other Part, for and in Consideration of five Shillings of lawful Money of *England* mentioned in the said Indenture to have been paid by the said *John Simpson* to the said *Henry Strongbill*, he the said *Henry Strongbill* demised, bargained, and sold to the said *John Simpson* the Tenements aforesaid,

Precedents of Special Verdicts

with the Appurtenances mentioned in the Declaration aforesaid, to have and to hold to the said *John Simpson* from the Feast of Saint *John Baptist* then last past, before the Date of the said Indenture, for the Term of six Months then next following, as by the said Indenture produced to the Jury in Evidence doth more fully appear: By Virtue whereof he the said *John Simpson* entered into the said Tenements, with the Appurtenances mentioned in the said Declaration, and was thereof possessed for the Term aforesaid; and being so possessed thereof, afterwards, to wit, on the eleventh Day of the same Month of *August*, in the Year last above mentioned, by an Indenture executed between the said *Henry Stronghill* of the one Part, and the said *John Simpson* of the other Part, bearing Date the same Day and Year, in consideration of the Sum of nine hundred Pounds of lawful Money of *England* paid by the said *John Simpson* to the said *Henry Stronghill*; he the said *Henry Stronghill* granted, bargained, sold, released, and confirmed to the said *John Simpson* and his Heirs (he then being in actual Possession thereof) the Tenements aforesaid, with the Appurtenances, mentioned in the said Declaration, *to have and to hold to the said John Simpson, his Heirs and Assigns to the*

And the next
Day releases to
him in Fee.

the sole Use and Behoof of the said *John Simpson*, his Heirs and Assigns for ever: And the said Jurors do upon their said Oath farther declare, that in the said last mentioned Indenture it is thus contained in the following Clause, that is to say,

And the said Henry Stronghill for himself, his Heirs, Executors and Administrators, and for every of them doth farther covenant, promise, and grant to and with the said Sir John Sympson his Heirs and Assigns, for the farther and better granting and assuring the said several Pieces and Parcels of fresh Marsh Grounds, Lands, Wood Grounds, Tenements, and Hereditaments, and all other the Premises, and every Part and Parcel thereof, with their and every of their Appurtenances, unto the said Sir John Simpson, his Heirs and Assigns, for the Intent aforesaid, that he the said Henry Stronghill shall and will before the End of Michaelmas Term next ensuing the Date of these Presents, upon the Request of the said John Simpson, and at the Costs and Charges of him the said Henry Stronghill, suffer or cause to be suffered, one or more good and perfect Common Recoveries, before the Judges of his Majesty's Court of Common-Pleas at Westminster, accord-

A Covenant to
suffer a Reco-
very there-
upon.

Precedents of Special Verdicts.

ing to the usual and common Order and Form of common Recoveries for Assurances of Lands in such Cases used; and also that be the said Henry Stronghill shall and will from time to time and at all times hereafter within the Space of one Year next ensuing the Date of these Presents, and upon the Request of the said Sir John Simpson, and at the Costs and Charges in the Law of him the said Henry Stronghill his Heirs and Assigns, make, do, acknowledge, levy, suffer and execute, or cause to be made, done, acknowledged, levied, executed, and suffered, all and every such farther and other such lawful and reasonable Act or Acts, Deed or Deeds, Conveyances and Assurances in the Law whatsoever, for the farther and better granting, conveying and assuring the said several Pieces or Parcels of fresh Marsh Grounds, Lands, Wood-Grounds, Tenements and Hereditaments, and all other the Premises and every Part or Parcel thereof, with their and every of their Appurtenances, unto the said Sir John Simpson, his Heirs and Assigns for ever; be it by one or more Fine or Fines, common Recovery or Recoveries, with single or double Voucher or Vouchers, Feeoffment, Release, Warranty, or by any other lawful Ways or Means whatsoever, as by the said Sir John Simpson, his Heirs or Assigns, or by his or their Council learned

learned in the Law, shall be reasonably devised, advised, or required; so that the Party or Parties that by the Force of this Covenant shall be to make such farther Assurances be not for the doing thereof compelled or compellable to travel or go farther than the Cities of London or Westminster for doing of the same; which said Fine or Fines, Recovery or Recoveries, Conveyances and Assurances of the Premises heretofore made or hereafter to be made of the Premises with the Appurtenances, shall be and ensue, and shall be adjudged, deemed, construed, and taken to be and ensue to the only Use and Beboof of the ^{The Use} said Sir John Simpson, his Heirs and Assigns for ever; and to and for no other Use, Intent, or Purpose whatsoever; as it doth and may by the said Indenture produced to the said Jurors, more fully appear.

And the said Jurors do upon their said Oath further declare, that one *Francis Twisden* Esquire sued out of the Court of Chancery of our said late Sovereign Lord *Charles the Second*, late King of *England*, &c. against the said *John Simpson* a Writ of Entry of our said late Sovereign Lord the King *sur De-seisin le de post*, returnable before his said late Majesty's Justices of the Court of *Common Pleas* at *Westminster*, in the said County of *Middlesex* in three Weeks

That a Writ of Entry was sued out, and a Recovery had thereupon.

Precedents of Special Verdicts

Weeks from the Day of St. Michael then next following, by which Writ the said *Francis Twisden* demanded against the said *John Simpson* the Tenements aforesaid with the Appurtenances mentioned in the Declaration aforesaid (amongst other things,) by the Name of one Messuage, one Garden, 120 Acres of Land, and thirty Acres of Wood, and an hundred Acres of fresh Marsh, with the Appurtenances, in the Parish of *New-Church, Lud and Riverton*, as his Right and Inheritance, and wherein the said *John* had not an Entry, unless after a Disseisin, which *Hugh Hunt* unjustly and without any Judgment made upon the said *Francis* within thirty Years &c. And whereupon he declared, that he himself was seised of the Tenements with the Appurtenances in his Demesne, as of a Fee and Right in Time of Peace, in the Reign of our said Sovereign Lord the King, that then was, by taking the Profits thereof to the Value, &c. and wherein, &c. and therefore he brought his suit, &c. And the said *John* in his own Person came and defended his Right, when, &c. and Vouched thereto to warranty the said *Henry Strongbill* Gentleman, who was then personally present in Court, and freely warranted the said Tenements, with the Appurtenances, to him, &c. and there-

Wherein *Henry Strongbill* was vouched,

thereupon the said *Francis* demanded against him the said *Henry Tenant* by his Warranty the Tenements aforesaid, with the Appurtenances in the manner aforesaid, and whereupon he declared that he was seized of the said Tenements with the Appurtenances in his Demesne as of a Fee and Right, in Time of Peace, in the Reign of our Sovereign Lord the King that then was, by taking the Profits thereof to the Value, &c. and wherein, &c. and therefore he brought his Suit, &c. and the said *Henry Tenant* by his Warranty defended his Right when, &c. and thereupon further vouched to Warranty *John Wheeler*, who was likewise then personally present in Court, and freely warranted to the said *Henry* the said Tenements with the Appurtenances, &c. and whereupon the said *Francis* demanded against the said *John Wheeler Tenant* by his Warranty the Tenements with the Appurtenances, in the manner aforesaid; and whereupon he declared he was seized of the said Tenements, with the Appurtenances in his Demesne as of a Fee and Right in Time of Peace, in the Reign of our Sovereign Lord the King that then was, by taking the Profits thereof to the Value, &c. and wherein, &c. and therefore he brought his Suit, &c. And the said *John Wheeler Tenant* by his Warranty defended his Right, when, &c. and pleaded,

Who vouched
the common
Vouchee.

Vouchee's Plea

Precedents of Special Verdicts

Imparience.

Judgment on
the Recovery.

Writ of Seisin.

pledged, That the said *Hugh* did not disseise the said *Francis* of the Tenements aforesaid, with the Appurtenances, as he the said *Francis* had above supposed in his Writ and Declaration, and thereof he put himself on the Country; and thereupon the said *Francis* craved Leave to imparle thereto, and it was granted him, &c. afterwards the said *Francis* personally came back into this said Court the same Term, and he the said *John Wheeler*, tho' solemnly called, came not back but departed, in despite of the Court, and made Default, therefore it was adjudged that the said *Francis* recover his Seisin against the said *John Simpson* of the Tenements aforesaid, with the Appurtenances, and that the said *John Simpson* have of the Land of the said *Henry*, to the Value, &c. and that the said *Henry* further have of the Land of the said *John Wheeler*, &c. and that the said *John* should be amerced, &c. and thereupon the said *Francis* prayed a Writ of our said late Sovereign Lord the King to be directed to the Sheriff of the County aforesaid, to cause him to have full Seisin of the Tenements aforesaid with the Appurtenances, and it was granted to him returnable on the morrow of St. *Martin* then last past, at which Day the said *W* personally came before his said late Majesty's Justices at *Westminster*, and the

the Sheriff, to wit, G. Atkins Esquire The Return, then returned, that he, by Virtue of that Writ to him directed, had on the thirty-first Day of *October* then last past caused the said *Francis* to have full Seisin of the Tenements aforesaid, with the Appurtenances, as by the same Writ he was commanded to do; by Virtue whereof he the said *John Simpson* entered into the Tenements aforesaid (whereof the Tenements aforesaid mentioned in the said Declaration are parcel) and was seised thereof, as the Law requires; and being so seised thereof, afterwards, *to wit*, on the first Day of *May* in the Year of our Lord one thousand six hundred and eighty-three, he died, and after whose Decease the Tenements aforesaid, with the Appurtenances, whereof, &c. descended to *Thomas Simpson* only Son and Heir of the said *John Simpson*; by Virtue whereof he the said *Thomas Simpson* the Son entered into the said Tenements, with the Appurtenances, and was seised thereof, as the Law requires; and afterwards, *to wit*, on the sixteenth Day of *November*, in the Year of our Lord one thousand six hundred eighty-three, he the said *Thomas Simpson* being seised, as aforesaid, did by an Indenture *Tripartite* executed between the said *Henry Strongbill* and *Thomas Simpson* of the first

That *Simpson*
entered and
was seized,
and died seized,
and the Premi-
ses descended
to his Son and
Heir, who en-
tered and was
seized,

And by his In-
denture of Bar-
gain and Sale
granted to
*Henry Oxen-
den*, &c.

Part, *Henry Oxenden Esquire*, by the Name of *Henry Oxenden of Deane in the Parish of Wingham in the County of Kent Esquire*, of the second Part; and *George Oxenden of Doctors Commons, London*, Doctor of Laws, and *Richard Oxenden of Grays Inn Esquire* of the third Part; bearing Date the same Day and Year, in Consideration of the Sum of five Shillings of lawful Money of *England*, mentioned in the said Indenture to have been paid to the said *Henry Strongbill and Thomas Simpson*, they the said *Henry Strongbill and Thomas Simpson* bargained and sold to the said *George Oxenden and Richard Oxenden* the Tenements aforesaid with the Appurtenances mentioned in the said Declaration, (amongst other things) *to have and to hold* to the said *George and Richard*, from the Day next before the Day of the Date of the said Indenture, for the Term of one whole Year next ensuing, with an Intent that the said *George and Richard* should by Virtue of the said Indenture, and by Force of the Statute for transferring Uses into Possession, be in actual possession of the Premises aforesaid, whereof, &c. and be thereby enabled to except a Grant and Release of the Reversion and Inheritance therein to the said *George and Richard* and their Heirs, to the Uses Intents and Purposes to be limited

ex-

expressed and declared, as by the said Indenture produced in Evidence to the said Jurors it doth and may more fully appear; by Virtue whereof the said *George Oxenden* and *Richard Oxenden* entred into the Tenements aforesaid, mentioned in the said Declaration, and was thereof possessed for the Term aforesaid; and being so possessed thereof afterwards, *to wit*, on the seventeenth Day of *November*; in the Year of our Lord last above mentioned, by an Indenture *Tripartite* executed between them the said *Henry Stronghill* and *Thomas Simpson* of the first Part, the said *Henry Oxenden* of the second Part, and the said *Richard Oxenden* and *George Oxenden* of the third Part, bearing Date the same Day and Year, in consideration of the Sum of nine hundred ninety five Pound five Shillings of lawful Money of *England* paid by the said *Henry Oxenden* to the said *Thomas Simpson*, and of the Sum of eight hundred and forty four Pounds fifteen Shillings of like lawful Money of *England* paid by the said *Henry Oxenden* to the said *Henry Stronghill*, he the said *Henry Stronghill* sold, alien'd, released, and confirmed to the said *George Oxenden* and *Richard Oxenden*, amongst other Things, the said Tenements with the Appurtenances mentioned in the Declaration

That *Henry Stronghill* and *Thomas Simpson* released to *George Oxenden* and *Richard Oxenden*.

Precedents of Special Verdicts

claration aforesaid, then being in their actual Possession, to have and to hold to the said *George Oxenden and Richard Oxenden*, their Heirs and Assigns for ever: and the said Jurors do upon their said Oath further declare, that this following Clause is contained in the said Indenture last mentioned.

Wherein was a
Covenant for
further Assu-
rance.

And the said Henry Stronghill and Thomas Simpson, for themselves severally, and for their several Heirs and Assigns, do covenant and grant, to and with the said George Oxenden and Richard Oxenden, and their Heirs and Assigns, and every of them, by these Presents, that they the said Henry Stronghill and Thomas Simpson and their Heirs, and also all and every other Person or Persons lawfully having or claiming, or which shall or may at any time hereafter have or lawfully claim any Estate, Title or Interest of in or to the Premises hereby granted or of in or to any Part or Parcel thereof, by from or under them or the said Sir John Simpson, or any or either of them, shall and will from time to time, and at all times hereafter, for and during the Space of seven Years next after the Date of these Presents, at and upon the reasonable Request Costs and Charges in the Law of the said George Oxenden and Richard Oxenden, their Heirs and Assigns

Assigns or some of them, do make, levy, execute and acknowledge, and suffer or cause to be made, done, acknowledged, levied, executed and suffered, all and every such further and other lawful Act and Acts, Thing and Things, Device or Devices, Assurance and Assurances, Conveyance and Conveyances in the Law whatsoever, for the better and more perfect Assurance, Surety, sure making and conveying, settling, establishing, and confirmation of the said several Pieces or Parcels of fresh Marsh Grounds, Lands, Wood Grounds, Tenements, Hereditaments and Premises, hereby bargained and sold, or mentioned to be hereby bargained and sold, or any of them, and of every Part and Parcel thereof, with all and singular their and every of their Appurtenances, unto the said George Oxenden and Richard Oxenden, their Heirs and Assigns, according to the true Intent and Meaning of these Presents, be it by Fine or Fines, Feoffment or Feoffments, Deed or Deeds, enrolled or not enrolled, the Enrollment of these Presents, or otherwise howsoever, as by the said George Oxenden and Richard Oxenden, their Heirs and Assigns, or any of them, or by their or any of their Council learned in the Law, shall be reasonably advised, desired or required; so as such farther

Whether by
Fine or other-
wise.

Precedents of Special Verdicts.

Acts, Things, Devices, Assurances and Conveyances, contain no further Covenant or Warranty than in these Presents is contained, and so as the Person or Persons, who shall be required to do, make, levy, execute, acknowledge, and suffer the same, be not compelled to travel farther than the Cities of London and Westminster for the doing thereof: And it is declared, concluded and agreed by and between all the said Parties to these Presents; and the said Henry Stronghill for himself, his Heirs, Executors, and Administrators, doth covenant, promise, declare and agree, to and with the said Henry Oxenden, his Heirs, Executors, Administrators, and Assigns, that all and every Fine or Fines, Recovery and Recoveries, levied or suffered by him the said Henry Stronghill, or Frances the now Wife of the said Henry Stronghill, Feoffment and Feoffments, Conveyance and Assurance in the Law whatsoever, heretofore had and executed, or hereafter to be had, levied and executed, by and between the said Parties to these Presents, or any of them, or by and between them or any other Person or Persons, of the Premises, or any Part or Parcel thereof, shall be an Enure, and shall be adjudged, deemed, and taken to be and enure

enure to the only Use and Beboof of the said George Oxenden and Richard Oxenden, their Heirs and Assigns for ever; as by the said Indenture produced in Evidence to the said Jurors it doth and may appear; by Virtue whereof they the said George and Richard Oxenden entered into the said Tenements, with the Appurtenances mentioned in the said Declaration, whereof, &c. and were seised thereof as the Law requires; and being so seised thereof, afterwards, that is to say, in Michaelmas Term, in the Year last above mentioned, a Fine was levied in the Court of our late Sovereign Lord King Charles the Second, before Thomas Jones, Hugh Wyndham, Job Charlton, and Creswell Levinz, his said late Majesty's Justices of the Court of Common Pleas, between the said Henry Oxenden Plaintiff, and the said Henry Strongbill and the said Frances his Wife, Deforcients of the Tenements aforesaid, with the Appurtenances mentioned in the said Declaration, by the Name of one Barn, thirty Acres, and one hundred and thirty Acres of fresh Marsh, with the Appurtenances, in Lydd and in the Parish of New Churcb, Rumney Marsh, Wood Churcb, Riverton, Kunerton, otherwise Kenertbington, by which said Fine they the said Henry Strongbill and Frances acknowledged the Tenements aforesaid,

That George
and Richard
Oxenden en-
tered,

And a Fine was
levied to them
by Strongbill
and his Wife.

Precedents of Special Verdicts

with the Appurtenances, whereof, &c. amongst other Things, to be the Right of *Henry Oxenden*, as those which he the said *Henry Oxenden* had by the Gift of the said *Henry Stronghill* and *Frances*, and those they remised and quit claimed from them the said *Henry Stronghill* and *Frances* and their Heirs, to the said *Henry Oxenden* and his Heirs for ever; and further, they the said *Henry Stronghill* and *Frances*, granted for themselves and the Heirs of the said *Henry Stronghill*, that they would warrant to the said *Henry Oxenden* and his Heirs the Tenements aforesaid, with the Appurtenances, whereof &c. against the said *Henry Stronghill* and *Frances* and the Heirs of the said *Henry Stronghill* for ever; and the said Jurors do upon their said Oath farther declare, that the said Fine levied,

The Use.

That *George*
and *Richard*
Oxenden entered
and were
seized.

Henry Strong-
bill died.

as aforesaid, was levied to the use of the said *George Oxenden* and *Richard Oxenden* their Heirs and Assigns, whereby the said *George Oxenden* and *Richard Oxenden* was seised of the Tenements aforesaid with the Appurtenances; (whereof the Tenements mentioned in the said Declaration are parcel) as the Law requires; and afterwards, to wit, in the Year of our Lord one thousand six hundred and ninety five, the said *Henry Stronghill* died, and left Issue of his Body *Richard Stronghill* the Lessor of the Plaintiff

Plaintiff, his first begotten Son and Heir the said *Richard* then being within the Age of twenty-one Years, and the said *Richard Oxenden* and *George Oxenden* being so seised thereof, they the said *George* and *Richard* afterwards, *to wit*, on the first Day of *April*, in the ninth Year of the Reign of his present Majesty *William the third*, King of *England, &c.* demised the Tenements aforesaid, with the

*Richard his
first Son being
thenunder Age.*

Appurtenances, whereof the Tenements mentioned in the said Declaration aforesaid are parcel to the said *John Jordan*, *John Mittell*, and *Thomas Hammond*, *to have and to hold* to the said *John Jordan*, *John Mittel*, and *Thomas Hammond*, from the Feast of the *Annunciation of the Blessed Virgin Mary* then last past, for one whole Year, as long as both Parties should please: By Virtue of which Lease they the said *John Jordan*, *John Mittel* and *Thomas Hammond*, entered into the said demised Premises, with the Appurtenances, and were possessed thereof: and being so possessed thereof, he the

*That George
and Richard
Oxenden leased
to John Jordan
the Premises at
will,*

said *Richard Strongbill* Lessor of the said *James York*, afterwards, *to wit*, on the seventh Day of *October*, in the ninth Year of the Reign of his present Majesty, entered into the said Tenements, with the Appurtenances, (whereof the said Tenements mentioned in the said Declaration are parcel) and from thence

*And the Plain-
tiff's Lessor en-
tered upon
them.*

And ejected them, and became seized, and demised to the Plaintiff, drove out and removed the said *John Jordan, John Mittell and Thomas Hammond*, and was seized thereof, as the Law requires; and being so seized thereof, he the said *Richard Strongbill*, on the seventh Day of *October*, in the ninth Year of the Reign of his present Majesty, demised to the said *James York* the Tenements aforesaid, with the Appurtenances, to hold to the said *James York* and his Assigns, from the 29th Day of *September* then last past, to the full End and Term of five Years from thence next ensuing and fully to be compleat and ended; by Virtue of which said Demise, he the said *James York* entered into the Tenements, with the Appurtenances, and was thereof possessed, untill the said *John Jordan, John Mittell, and Thomas Hammond*, afterwards to wit, on the said seventh Day of *October* in the ninth Year aforesaid, mentioned in the Declaration aforesaid, entered into the Tenements aforesaid, with the Appurtenances, which the said *Richard Strongbill* had demised to the said *James*, in the manner aforesaid, for the said Term, which is yet unexpired in and upon the Possession of the said *James*, and ejected, drove out and removed him the said *James* from his Farm aforesaid, for the Term aforesaid; and him the said *James* so ejected, driven out and re-

Who entered upon the Defendants.

removed, hath with-held and still doth withhold from his said Possession thereof, as the said *James* doth within thereof complain against him ; but whether upon the whole Matter aforesaid found by the said Jurors, in the manner aforesaid, it shall appear to his Majesty's Justices of this Court, that they the said *John Jordan, John Mittell, and Thomas Hammond*, are guilty of the Trespass and Ejectment within written, in the Tenements aforesaid with the Appurtenances mentioned in the said Declaration, the said Jurors are altogether ignorant ; and therefore pray the Advice of this Court ; and if upon the whole Matter aforesaid found by the said Jurors, in the manner aforesaid, it shall appear to his said Majesty's Justices of this Court, that they the said *John Jordan, John Mittell, and Thomas Hammond*, are in Construction of Law guilty of the Trespass and Ejectment aforesaid in the said Tenements, with the Appurtenances, within mentioned in the said Declaration, then the said Jurors declare upon their said Oath, that they the said *John Jordan, John Mittell and Thomas Hammond*, are guilty thereof, in such manner and form as the said *James York*, doth within thereof complain against them, and they assess the Damages of the said *James* on that Occasion, besides his Expences and Costs

laid

Precedents of Special Verdicts

If not, then
they find them
Not Guilty.

laid out by him about his Suit in this Cause, to twelve Pence, and for his Expences and Costs to twenty Shillings, but if upon the whole matter aforesaid found by the said Jurors in the manner aforesaid, it shall appear to his said Majesty's Justices of this Court, that they the said *John Jordan, John Mittel, and Thomas Hammond*, are in Construction of Law not guilty of the Trespass and Ejectment aforesaid, in the Teneiments aforesaid, with the Appurtenances, abovementioned in the said Declaration, then the said Jurors declare upon their said Oath, that they the said *John Jordan, John Mittel, and Thomas Hammond*, are not guilty thereof, in such manner and form as the said *John Jordan, John Mittel, and Thomas Hammond* have within alledged in their Plea; and because the said Justices of this Court are not yet advised what Judgment to give of and concerning the Premises, a Day therefore is given to the said Parties, before Sir *George Treby* Knight and his Bretheren, his said Majesty's Justices of hisaid Court of Common Pleas, in fifteen Days from *Easter* Day, to hear their Judgment thereupon, (the Proceedings to be in the same State as they now are) at which Day as well the said *James* as the said *John Jordan, John Mittel, and Thomas Hammond* came hither by their Attornies aforesaid; and because

The Conti-
nuances.

the

the said Justices of this Court are willing further to advise themselves of and concerning the Premises, before they give Judgment thereupon, a Day is here given to the said Parties till the morrow of the *Holy Trinity*, to hear their Judgment thereupon, for that the said Justices are not yet determined,
Ec.

Humfry, v. Bathurst.

WINFORD.

Hill 35. and 36. K. Charles II. Roll 694.

AND the said *Edward* by *Edmund Hodfall* his Attorney comes and defends the Force and Injury, when, Ec. and pleads, That he is in no wise guilty *Not Guilty* of the Trespass and Ejectment aforesaid, as the said *John* above complains against him, and thereof he puts himself upon the Country, and the said *John* does likewise the same: Therefore the Sheriff is commanded that he cause to come hither on the *Octave of the Purification of the Blessed Virgin Mary*, twelve, Ec. by whom, Ec. and who neither, Ec. to recognize, Ec. because as well, Ec. At which Day the Jury between the said Parties in the said Action were respite

The Award of
the Venire.

1 Lus. 741.

spited here until this Day (*namely*) in
The Award of fifteen Days from the Feast of *Easter*
Nisi prius.

then next following, unless his present
Majesty's Justices assigned to hold the
Assizes in the County aforesaid, by vir-
tue of the Statute, &c. should come
before on *Tuesday* the eighteenth Day
of *March* next ensuing, at *Rochester* in
the County aforesaid. *And now here* at
this Day the said *John* came by his said
Attorney and the said Justices of Assizes
before whom, &c. returned hither their
Record in these Words: *Afterwards*,
at the Day and Place within contained,
as well the within named *John Hum-*
fry, as the within written *Edward*
Batburst, by their Attornies within
mentioned, came before Sir *Thomas*
Jones Knight, his Majesty's Chief Ju-
stice of the Court of *Common-Pleas*, and
Sir *Job Charlton* Knight, one of his said
Majesty's Justices of the *Common-Pleas*,
assigned by virtue of the Statute, &c.
to hold the Assizes in the County of
Kent, and the Jurors of the Jury where-
of mention is within made, being sum-
moned, some of them (*namely*) *E S, RV,*
JS, TS, RG, CL, WB, RT, and *JT*,
appear, and are sworn upon the Jury:
And because the rest of the Jurors of the
Jury have not appeared, therefore others
Tales awarded. of the By-standers chosen by the Sheriff
of the County aforesaid for this purpose,
are

are at the Request of the said *John Humfry*, and by the Command of the said Justices put on anew, whose Names are affiled in the within written Pannel, according to the Direction of the Statute in such Case made and provided; and the Jurors so put on anew (namely) *J B, T M, and M B*, being called, likewise appear, who being chosen tried and sworn, together with the Jurors before impanelled and sworn to declare the Truth of the within Contents, as to the within written Trespass and Ejectment in two Parts of the Manor of *Pullens*, with the Appurtenances within mentioned (the whole in three Parts to be divided) and also in two Parts of all and singular the Tenements within written, with the Appurtenances (the whole in three Parts likewise divided), declare upon their Oath, that the said *E B* is in no wise guilty thereof, as the said *E B* hath within alledged in his Plea: And as to the within written Trespass and Ejectment in the third Part of the Manor aforesaid, with the Appurtenances, residue of the said Manor, and also in the third Part of all and singular the Tenements aforesaid, with the Appurtenances residue of the said Tenements, with the Appurtenances (the whole in three Parts to be divided), as aforesaid, The said *Jurors* do farther declare upon their

*As to two Parts
of the Manor,
and as to two
third Parts of
the Premises
Not Guilty.*

*As to the other
Third Part, the
Special Verdict*

Precedents of Special Verdicts

their said Oath, that long before the within written Time when the Trespass and Ejection within mentioned is within supposed to have been committed,

That the 1st of December, in the thirty eighth Year of the Reign of the 38. of Eliz. P. ~~Barber~~ was our late Sovereign Lady Elizabeth late Queen of England, one Paul Batburst was seised in Fee of and in the Manor aforesaid, with the Appurtenances, and also of and in all and singular the Tene- ments aforesaid with the Appurtenances specified in the within written Declara- and that he had Mac Edward his Son and Heir apparent. tion, in his Demesne as of a Fee: And the said Jurors further declare upon their said Oath that the said Paul Batburst had Issue of his Body lawfully begotten, Edward Batburst his Son and Heir ap- patent; and that the said Paul Batburst afterwards and before the said Time when, &c. namely on the seventh Day of December, in the fortieth Year of the Reign of our said late Sovereign Lady Elizabeth, late Queen of England, &c. made and ~~and others~~ as his Deed delivered a certain Indenture, sealed with his Seal, executed between the said Paul Batburst by the Name of Paul Batburst (as in the Deed) of the one Part, and the said Edmund Batburst his Son, one John Horsmonden, George Day, and Robert Austen, by the Names of John Horsmonden, &c. (as in the Deed), of the other Part, bearing Date

That P. on the 7th of December, 40 Eliz. executed an Indenture be- between him of of our said late Sovereign Lady Elizabeth, the one Part, and the said Ed- ~~and others~~ of the other Part. sealed with his Seal, executed between the said Paul Batburst by the Name of Paul Batburst (as in the Deed) of the one Part, and the said Edmund Batburst his Son, one John Horsmonden, George Day, and Robert Austen, by the Names of John Horsmonden, &c. (as in the Deed), of the other Part, bearing Date on

on the said seventh Day of *December*,
 in the said fortieth Year of the Reign of
 our said late Sovereign Lady *Eliza-*
beth, late Queen of *England*, &c. the
 Tenor of which Indenture followeth in
 these Words: *This Indenture, made*
the seventh Day of December, in the
fortieth Year of the Reign of our Sove-
reign Lady Elizabeth, by the Grace of
God Queen of England, France and Ire-
land, Defender of the Faith, &c. be-
tween Paul Bathurst of Gowdhurst in the
County of Kent Gentleman, of the one
Part, and Edward Bathurst Gentle-
man, Son and Heir apparent of the said
 Paul, John Horsemonden of Gowdhurst
 aforesaid *Clotbier*, George Day of
 Boughton Mounchelsey in the said
 County *Taylor*, and Robert Austen of
 Gowdhurst aforesaid *Clotbier*, of the o-
 ther Party; Witnesseth, that the said
 Paul Bathurst, for the Advancement, and
 Preferment of the said Edward Bathurst,
 and of the Heirs Males of his Body
 lawfully begotten and of the other of the
 Children of the said Paul the Father,
 hereafter in these Presents specially na-
 med, and of the Heirs Males of his Bo-
 dy lawfully begotten, and for divers
 good Causes and Considerations him
 thenceunto moving, hath granted, enfe-
 offed, aliened, and confirmed, and by
 these Presents doth grant, enfeoff, alien,
 and

The Indenture
 by which the
 said P. for the
 Preferment of
 his Son *Edward*
 granted, &c.
 to *Edward*, &c.
 the Premises
 in the Declara-
 tion.

and confirm, unto the said Edward Bathurst, John Horsemonden, George Day, and Robert Austen, All that the Mannor of Pullens, situate, lying, or being within the Parishes of Horsemonden and Lamberhurst, in the said County of Kent, with all and singular the Appurtenances, and all other the Lands, Tenements, and Hereditaments, of the said Paul Bathurst, lying or being within the said Parishes of Horsemonden and Lamberhurst, or either of them, to have and to hold the said Mannor Lands Tenements, and Hereditaments, and other the Premisses with the Appurtenances, unto the said Edward Bathurst,

*Habendum to
them and their
Heirs.*

To the Use of himself for Life, the Remainder to such Persons as he should appoint by his last Will, &c. for the Term of seven Years, and for want of such Appointment, immediately after his Death, to the Use of his Executors, &c. for seven Years for the Payment of his Debts and Legacies, and to perform his Will. John Horsemonden, George Day, and Robert Austen, their Heirs and Assigns, to the only Uses and Intents hereafter in these Presents expressed, and not to any other Use, Intent, or Purpose (that is to say) To the Use of the said Paul Bathurst and his Assigns for and during the Term of his Natural Life, without Impeachment, of and for any manner of Waste, and after the Decease of the said Paul, then to the Use of such Person or Persons as the said Paul shall by his last Will and Testament in Writing, or by any other Writing, subscribed with his own Hand, limit or appoint the same, if any such Limitation or Appointment be shall make, for and during the Term of seven Years

Years next after the Decease of the said Paul; and if it shall happen that the said Paul Bathurst shall not by his last Will and Testament in Writing, or by any other Writing subscribed with his own Hand, appoint or limit the said Manner Lands, Tenements, and Hereditaments, to any Person or Persons, that then immediately from and after the Decease of the said Paul Bathurst, the said Manner Lands, Tenements, and Hereditaments, shall be, and the said Edward Bathurst, John Horsemonden, Georg Day, and Robert Austen, and their Heirs, shall stand and be thereof seised to the Use of the Executors or Administrators of the said Paul, during the said Term of seven Years next after the Decease of the said Paul, for and towards the Payment of his Debts and Legacies, and for the Performance and Execution of his said Will; and after the Decease of the said Paul, and the said Term of seven Years next after his Decease expired and ended, then to the Use of the said Edward Bathurst, for and during the Term of his natural Life, without Impeachment of Waste; and after the Decease of the said Edward Bathurst the Son, then to the Use of the first Son of the Body of the said Edward lawfully begotten, and to the Heirs Males of his Body lawfully begotten;

The Remainder to the Use of Edward his Son for Life,

Remainder to his first Son in Tail Male.

Remainder to ten; and for Default of such Issue, then to the Use of the second Son lawfully begotten of the Body of the said Edward, and 5th Sons.

Remainder to the right Heirs of Paul. and to the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue, then to the Use of the third Son of the said Edward lawfully begotten, and the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue, then to the Use of the fourth Son of the said Edward lawfully begotten, and to the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue, then to the Use of the fifth Son of the Body of the said Edward lawfully begotten; and for Default of such Issue, then to the Use of the Right Heirs of the said Paul Bathurst for ever,

as it doth and may by the Indenture aforesaid, now shewn to the said Justices, and proved, read, and given in Evidence to the said Jury, (amongst other Things) more fully appear; and the said Jurors further declare upon their Oath, that the said Paul Bathurst afterwards and before the said Time when, &c. (namely) on the eighth Day of December, in the forty second Year of the Reign of the said late Sovereign Lady Queen Elizabeth, died at Goudhurst aforesaid, in the said County of Kent, and that the said Edward Bathurst, Son and Heir of Paul Bathurst, afterwards and before the said

That Paul Bathurst died the 6th of December, 42 Eliz.

Time

Time when, &c. (namely) on the eighth Day of *December*, in the forty second Year of the Reign of the said late Sovereign Lady Queen *Elizabeth*, died at *Gowdburft* aforesaid, in the said County of *Kent*, and that the said *Edward Bathurst*, Son and Heir of *Paul Bathurst*, afterwards and before the said

That *Edward*
his Son and
Heir entered
and was seized.

Time when, &c. (namely) on the tenth Day of the aforesaid Month of *December*, in the 42d Year aforesaid, entered into the said Manor and Tenements aforesaid, with the Appurtenances, and was seized thereof, as the Law requires ; and that the said *Edward Bathurst*, Son and Heir of *Paul Bathurst*, had Issue of his Body lawfully begotten four Sons, (viz.) *Thomas* his Eldest Son, *Edward* his second Son, Father to the said *Edward*, *William* his third Son, and *Richard* his fourth Son ; and that the said *Edward* the Father, being so seized afterwards, and before the said Time when, &c. (namely) on the first Day of *May*, in the Year of our Lord 1630, died at *Gowdburft* aforesaid, in the said County of *Kent* ; and that *Thomas Bathurst*, the eldest Son of the said *Edward* survived him ; and that he afterwards, and before the said Time when, &c. (namely) on the second Day of *May*, in the Year of our Lord one thousand six hundred and sixty three, entered into the

That he had
Issue *Thomas*,
his eldest Son,
and *Edward*,
William, and
Robert.

That *Edward*
the Father died
seized, 1 May,
1630.

That *Thomas*
his eldest Son
entered and
was seized.

Precedents of Special Verdicts

That Mich.
Term, 7 Car.
the said Thomas
suffered a Re-
covery.

said Manor and Tenements, with the Appurtenances, and was seised thereof as the Law requires: And the said *Jurors* do further declare upon their said Oath, that afterwards, and before the said Time, when, &c. (to wit) in *Michaelmas Term*, in the seventh Year of the Reign of his late Majesty King *Charles the First*, before Sir *Robert Heath* Knight, and his Brethren, then Justices of the Court of *Common Pleas* of his said late Majesty King *Charles the First* at *Westminster*, one *George Maplesden* Gentleman, and *James Sarys* Gentleman, personally demanded against the said *Thomas Patburst*, by the Name of *Thomas Patburst*, Gentleman, the Manor of *Pullens*, with the Appurtenances, and one Messuage, one Dove-House, one Garden, fifty Acres of Land, ten Acres of Meadow, fifty Acres of Pasture, one hundred Acres of Wood, a Rent of seven Shillings, and a Rent of fifteen Dishes, with the Appurtenances in *Horsemonden*, and *Lamberburst*, as his Right and Inheritance, and into which the said *Thomas* had not any Entry but after a *Diseisin*, which *Hugh Hunt* unjustly and without Judgment made thereon, to the said *George* and *James* within thirty Years, &c. And whereupon they declared that they were seised of the Manor, Tenements, and Rents aforesaid, with the

the Appurtenances in their Demesne of a Fee and Right in Time of Peace, in the Time of our late Sovereign Lord the King that then was, by taking the Profits thereof, &c. and in which &c. and thereof they brought their Suit, &c.

And the said *Thomas* personally came Wherein Edw. and defended his Right when, &c. And Howse was vouched.

thereupon vouched to Warranty *Edward Howse*, who being then personally present in Court, *Gratis* Warranted to him the Manor, Tenements, and Rents aforesaid, with the Appurtenances, and thereupon the said *George* and *James*, demanded against the said *Edward, Tenant* by his Warranty the Manor, Tenements, and Rents aforesaid, with the Appurtenances: And whereupon they declared that they were seised of the Manor, Tenements, and Rents aforesaid with the Appurtenances in their Demesne, as of a Fee and Right in Time of Peace, in the Time of our said late Sovereign Lord the King that then was, by taking the Profits thereof, &c. And in which, &c. And thereupon they brought their Suit, &c. And the said *Edward Tenant*, by his Warranty, defended his Right when &c. and pleaded that the said *Hugh* had not disseised the said *George and James* of the Manor, Tenements and Rents aforesaid, with the Appurtenances, as they the said *George*

The Plea of the Vouchee.

Precedents of Special Verdicts

and *James* had by their said Writ and Declaration supposed; and thereof they put themselves on the Country, and the said *George* and *James* did likewise the same; and the said *George* and *James* prayed leave thereto to imparl, and it was granted to them, &c. and afterwards that same Term they the said *George* and *James* personally came again there into Court at *Westminster*, and the said *Edward* altho' solemnly called came not again, but departed in Contempt of the Court, and made Default, therefore it was adjudged that the said *George* and *James* recover their Seisin against the said *Thomas* of the Manor, Tenements, and Rents, aforesaid, with the Appurtenances, and that the said *Thomas* have of the Lands of the said *Edward* to the Value, &c, And that the said *Edward* be amerced; and thereupon the said *George* and *James* prayed his Majesty's Writ to be directed to the Sheriff of the County aforesaid, to cause them to have full seisin of the Manor, Tenements, and Rents aforesaid, with the Appurtenances, and it was granted to them returnable forthwith into the Court aforesaid, and that afterwards, (namely) on the fifteenth Day of *November*, that same Term, the said *George* and *James* personally came there into the said Court at *Westminster*, and the Sheriff (namely) Sir

The Writ of
Seisin.

The Judgment

Imparllance.

Sir Robert Lewkener Knight, then made a return, that he by Virtue of the Writ aforesaid to him directed, on the tenth Day of November, then last past, caused the said George and James to have full seisin of the Manor, Tenements, and Rents, aforesaid with the Appurtenances, as he had been directed by the Writ aforesaid. And the said Jurors do further declare upon their said Oath, that the said Thomas Bathurst afterwards, and before the said Time, when, &c. (namely) on the twenty fifth Day of February, in the eighth Year of the Reign of his said late Majesty King Charles the first, made and as his Deed delivered an Indenture sealed with his Seal, executed between the said Thomas Bathurst by the Name of Thomas Bathurst of the one Part, and Sir Walter Roberts Knight and Henry Crisp Esquire, by the Names of, &c. of the other Part, bearing Date on the twenty fifth Day of February, in the eighth Year of the Reign of his said late Majesty King Charles the First, the Tenor of which said Indenture follows in these Words: *This Indenture made on the twenty fifth Day of February in the eighth Year of the Reign of our Sovereign Lord Charles, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c.*

The Return.

That Thomas Bathurst, the 25th of Feb, 8 Car. I. executed an Indenture between him of the one Part, and Walter Roberts and Henry Crisp of the other Part.

The Indenture, In which it is recited that the said T B was seised in Feb.

Precedents of Special Verdicts

between Thomas Bathurst of Gowdhurst in the County of Kent Esquire, of the one Part, and Sir Walter Roberts of Glafsenbury in the Parish of Cranebrook in the said County, Knight and Baronet, and Henry Crisp of Birchington in the Isle of Thanet in the said County Esq; of the other Party, Witnesseth, that whereas the said Thomas Bathurst now is and standeth seised in his Demesne as of a Fee, of and in the Man-
nor of Pullens, with the Rents and Ser-
vices thereunto belonging, (viz.) of and in
all that Messuage or Tenement, Dove-
Houses, Barns, with all other the Buil-
dings thereunto belonging, Closes, Gar-
dens, Orchards, Forstalls, called or
known by the Name of Pullens, together
with all those Pieces or Parcels of
Lands, Meadow, Arable - Pasture
Grounds, and Wood Lands thereunto
belonging or appertaining, or as Part
Parcel or Member thereof, now or
heretofore accepted, reputed, taken or
known, with all and singular their Ap-
purtenances now or late in the Tenure
or Occupation of one Richard Estland or
his Assigns; and also of and in all that
little House or Cottage now or late in
the Tenure or Occupation of one William
Allen and of and in all those Pieces or
Parcels of Land, Meadow and Pas-
ture, lately purchased of Thomas Hick-
mott

mott of Horsemonden in the said County, together with one other little House or Cottage, parcel of the last recited Premises, now or late in the Tenure or Occupation of one Edward Packham, commonly called or known by the Name or Names of Colebecke and Pell, and of and in all the Shawes and Woodlands to the said several Houses or Cottages or any of them belonging or appertaining, with their Appurtenances; all which said Premises do contain in the whole by Estimation two hundred Acres of Land and Wood, more or less, and are severally situate lying or being in the Parishes of Horsemonden and Lamberhurst in the said County of Kent.

And whereas there is a Marriage intended and very shortly by the Grace of God to be had and solemnized between the aforesaid Thomas Bathurst and one Elizabeth Hooper, second Daughter of John Hooper Esquire late of Stockbury in the said County, deceased; now this Indenture further Witnesseth, that the said Thomas Bathurst, as well for and in Recompence and Satisfaction of a Jointure or Dowter to be had for the said Elizabeth, in case after such Marriage so bad, she the said Elizabeth shall fortune to survive and over-live him the said Thomas Bathurst, as also for the Advancement of the Issues Males of the

Reciting also that a Marriage was intended between him and H. Hooper.

He by the same Indenture, for a Jointure for the said E.iz.

and for the Advancement of their Issue Male cove-

nanted, &c. with the Trustees, that he and his Heirs, &c.

would stand seized et al the Premises,

to the Use of himself and the said Elizabeth for their Lives.

Body of the said Elizabeth by him the said Thomas to be begotten, doth for himself and his Heirs covenant and grant to and with the said Sir Walter Roberts and Henry Crisp, their Heirs and Assigns, and to and with every of them by these Presents, that he the said Thomas Bathurst and his Heirs and all other Person or Persons claiming in by from or under him or them, immediately from and after the sealing and delivery of this present Indenture, shall stand and be seised of and in all and singular the aforesaid Messuages or Tenements, Cottages, Lands, Arable Pasture, and Wood-lands, with all and singular their Appurtenances, except of one parcel of Wood-land, thereof called Heyden in Lamberhurst aforesaid, to the Uses and Intents hereafter in these Presents expressed and declared; that is to say, to the Use and Behoof of them the said Thomas and Elizabeth during and by the full Time and Term of their natural Lives, and of the Life of the longest Liver of them two, and from and after the Deaths of them the said Thomas and Elizabeth and of the longest Liver of them two, then to the only and proper Use and Behoof of the first Heir Male of the Body of the said Elizabeth by the said Thomas to be begotten; and of the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue,

Remainder to
the first Heir
Male of their
Bodies.

to

to the Use and Behoof of the second Heir Male of the Body of the said Elizabeth by the said Thomas to be begotten, and of the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue, to the Use and Behoof of the third Heir Male of the Body of the said Elizabeth by the said Thomas to be begotten, and of the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue to the Use and Behoof of the fourth Heir Male of the Body of the said Elizabeth by the said Thomas to be begotten, and of the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue to the Use and Behoof of the fifth Heir Male of the Body of the said Elizabeth by the said Thomas to be begotten, and of the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue to the Use and Behoof of the sixth Heir Male of the Body of the said Elizabeth by the said Thomas to be begotten, and of the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue to the Use and Behoof of the Right Heirs of him the said Thomas Bathurst for ever, and to no other Use or Uses End Intent or Purpose whatsoever, as by the said last mentioned Indenture now shewn here to the said Justices, and proved read and given in Evidence to the said Jury, amongst other Things, it doth

Remainder to
 the second Heir
 Male, and so on
 to the third,
 fourth, fifth
 and sixth Heir
 Male.

Remainder to
 the right Heir
 of Thomas.

That the said
T B and Eliz.
married.

doth and may more fully appear. And the said Jurors do farther declare upon their said Oath, That the said *Thomas Batburst* afterwards and before the said Time when, &c. (namely) on the twenty sixth Day of the said Month of *February*, in the eighth Year of the Reign of his said late Majesty King *Charles* the First, took to Wife, and was lawfully married to the above named *Elizabeth Hooper*;

That *T B* died and that the said *Thomas Batburst*, without Issue. afterwards and before the said Time when, &c. (namely) on the twenty seventh Day of *February* in the ninth Year of the Reign of his said late Majesty King *Charles* the First, died at *Gowd-burst* aforesaid, in the said County of *Kent*, without any Issue of his Body lawfully begotten, and that the said *Elizabeth* his Wife survived him, and af-

terwards and before the said Time when, &c. (namely) on the twenty-eighth Day of *February* in the ninth Year of the Reign of his said late Majesty King *Charles* the First, she the said *Elizabeth* entered into the Manor and Tenements aforesaid, with the Appurtenances, and was thereof seised, for and during the

Term of the Life of the said *Elizabeth*, (the Reversion belonging to the Right Heirs, of the said *Thomas Batburst*,) and the said Jurors do further declare, upon their said Oath, that afterwards and before

The expectant
Reversion to
the right Heirs
of *T B*.

fore the said Time, when, &c. (to wit) on the first Day of *October*, in the Year of our Lord, one thousand six hundred and fifty eight, the said *William Bathurst*, Brother the said *Thomas*, made his last Will and Testament in writing, (amongst other Things) in these English Words following. *In the Name of God, Amen. I William Bathurst of Eltham, in the County of Kent, Merchant, do make and ordain this my last Will and Testament, in manner and form following.* I give to my loving Wife, my Reversion of one third Part of the Manor of *Pullens*, with the Lands and Tenements, after the Decease of my Sister *Elizabeth Bathurst*, Widow, during her natural Life: and as touching my Land given to my Wife, as aforesaid, after her Decease, I give as followeth: To my Daughter *Elizabeth*, and her Heirs, a quarter Part of a third Part of the Premises accruing to me after the Decease of the Relict of my Brother *Thomas Bathurst*, deceased, called *Pullens*, lying in the Parishes of *Horsmonden* and *Lamberhurst*, in the County of Kent. Item I give one quarter Part of the said Messuages, Lands, and Premises, to my Daughter *Mary*, and her Heirs. Item, I give to my Daughter *Nazareth*, and her Heirs one quarter Part of the said Mes-

That *W B* his
Brother made
his Will.

Precedents of Special Verdicts

Messuages, Lands, and Tenements. Item
I give to my Daughter Anne and her
Heirs, one other quarter Part of the
said Messuages, Lands, and Premises,
as by the said last Will and Testament of
the said William Batburst, now shewn
here to the said Justices, and read and
given in Evidence to the said Jury it
doth and may (amongst other things)
more fully and at large appear. And the
said Jurors do further declare upon their
said Oath, that the said William Bat-
burst afterwards and before the said
Time when, &c. (namely) on the eighth
Day of July, in the Year of our Lord
one thousand six hundred and fifty, died
at Eltham in the said County, and that
afterwards and before the said Time when,

That the 1st of December, 32 Car. II. the
said Eliz. died. Reign of his present Majesty King
Charles the Second, the said Elizabeth
Batburst, Widow and Relict of the above
named Thomas Batburst, died at Goud-
burst aforesaid in the said County of
Kent, and that after the Decease of the
said Elizabeth Batburst Widow and
Relict of the said Thomas Batburst, and
before the said Time when, &c (name-
ly) on the tenth Day of December in
in the thirty second Year of the Reign
his said present Majesty the said Edward
Batburst the now defendant, Son and
Heir

That on the
10th of Decem-
ber, 32 Car. II.
the Defendant
EB entered as
Heir to the said
TB.

Heir of the said *Thomas Bathurst* entered into the said Manor, and Tenements with the Appurtenances and was seised thereof, as the Law requires. And the said Jurors do further declare, upon their said Oath, that the said Manor and Tenements with the Appurtenances, now are, and for so long a Time as there is no remembrance of any Man to the contrary have been of the Tenure of antient Demesne of the Crown of the King of *England* in Fee, and during all that Time have been and now are held of the Manor of *Aylesford* in the said County of *Kent*, and that the said Manor of *Aylesford*, with the Appurtenances, now is, and for so long a Time as there is no remembrance of any Man to contrary, hath been antient Demesne of the Crown of the Kingdom of *England*; and the said Jurors do further declare upon their said Oath, that the said *Edward Bathurst* the Son (the now Defendant) being seised as aforesaid of and in the said Manor and Tenements, with the Appurtenances, (amongst other things) it is enroll'd among the Pleas at *Westminster*, before Sir *Francis North* Knight, and his Brethren the Justices of the Court of *Common Pleas* of our Sovereign Lord the King, of *Trinity Term* in the thirty third Year of the Reign of his present Majesty, that the said

That the said
Manor and Te-
nements are
antient De-
mesne held of
the Manor of
Aylesford.

That the
Defendant
being seized, it
is recorded a-
mongst the
Pleas at *West-
minster of Trin.*
33 Car. II. in
the Common-
Pleas.

That the Defendant was a
attached in
Writ of Dis-
cent to answer
to the said *Tho.
Culpeper* Lord
of the Manor
of *Aylesford*,
to reverse a
common Re-
covery.

said *Edward Bathurst* the Son, by the Name of *Edward Bathurst* Esquire; Son and Heir of *Edward Bathurst* his Father, and Heir to *Thomas Bathurst*, Esquire; was attached to answer to Sir *Thomas Colepeppre*, Baronet, Son and Heir of *Richard Colepeppre*, Baronet, and Heir to Sir *William Colepeppre*, Baronet, of a Plea that *whereas* the said *Thomas Colepeppre*, for ten Years then last past, had been and then was seised of the Manor of *Aylesford*, with the Appurtenances, in the said County in his Demesne, as of a Fee, which said Manor, with the Appurtenances, then was, and for so long a Time as there was no remembrance of any Man to the contrary, had been antient Demesne of the Crown of *England*, and all the Lands and Tenements which were held of that Manor had time out of mind been pleadable and impleaded in the Court of the said Manor before the Steward thereof for the Time being, by his Majesty's Writ of Right Close, and not else-where, according to the Custom of the said Manor time out of mind therein used and approved of. And that the said *Thomas Bathurst* in his Life-time and *George Maplesden*, Gentleman, and *James Sarys* Gentleman, (being now likewise dead,) well knowing the Premises, but contriving craftily to deceive and defraud the said

said *William* and his Successors, Lords of the said Manor, of the Profit of that Manor; they the said *George Maplesden* and *James Sarys*, on the seventeenth Day of *October*, in the seventh Year of the Reign of his late Majesty King *Charles* the First, (he the said *William* being seized of the said Manor, with the Appurtenances in his Demesne, as of a Fee) prosecuted out of the High Court of *Chancery* of his said late Majesty, (that Court then being held at *Westminster* in the County of *Middlesex*,) his said late Majesty's Writ of Entry *Sur Diffeisin en le post*, against the said *Thomas Bathurst* of the Manor of *Pul-lens*, with the Appurtenances, and of one Messuage, one Dove-house, one Garden, fifty Acres of Meadow, ten Acres of Pasture, one hundred Acres of Wood, a Rent of seven Shillings, and a Rent of fifteen Dishes, with the Appurtenances, in *Horsemonden* and *Lamberhurst* in the said County of *Kent*, directed to the Sheriff of the same County, and returnable before his said late Majesty's Justices at *Westminster* aforesaid, on the Morrow of *All-Souls* then next ensuing; by Virtue of which said Writ and the Return thereof, such Proceedings in Law were made and had thereupon on the said Morrow of *All-Souls*, and other concurring Circumstances requisite in such

such Cases, that they the said *George* and *James* in *Michaelmas Term*, in the said seventh Year, recovered against the said *Thomas Batburft* the said *Manor of Pullens*, and the *Tenements and Rents*, with the *Appurtenances*, as by the Record and Proceedings thereof now remaining in his said Majesty's Court, before his Justices (*to wit*) at *Westminster* aforesaid, it doth and may more fully and at large appear; which said Recovery was suffered to the use of the said *Thomas Batburft* and his Heirs for ever; and by means of the said Recovery, and by force of an A&t made in the Parliament of our late Sovereign *Henry VIII.* late King of *England*, on the fourth Day of *February*, in the twenty seventh Year of his Reign, at *Westminster* in the County of *Middlesex*, for transferring Uses into Possession, he the said *Thomas Batburft* became seized of and in the said *Manor of Pullens*, and of the *Tenements and Rents* aforesaid, with the *Appurtenances* in his *Demesne* as of a Fee: And he the said *Thomas Colepeppyr* farther declared, that the *Manor, Tenements, and Rents*, with the *Appurtenances* specified in the said *Writ of Entry*, at the time of suing out of the said *Writ*, and also at the time of the said Recovery thereupon had, were held of the said *WC* as of his *Manor of Aylesford* afores-

· aforesaid, and during all the Time aforesaid, until the Day of suing out of the said Writ, according to the Custom of the said Manor of *Aylesford*, were pleadable and impleaded in the Court of the said Manor, and not elsewhere; by which Recovery suffered in the Manor aforesaid, the said Manor of *Pullens*, and the Tenements aforesaid, with the Appurtenances, became a *frank fee*, and pleadable and impleaded at Common Law, to the Deceit of the Court of the said, *William* Lord of the Manor of *Aylesford* aforesaid, and to the manifest Danger of the Disinherison of the said *TC.* to the Damage of the said *TC* Forty Pounds; and whereupon the said *TC*, by *Hope Gyfford* his Attorney complained, that whereas the said *TC* for ten Years then last past had been and then was seized of the Manor of *Aylesford*, with the Appurtenances, (and so reciting the Count in the Writ of Deceit in the same manner with the Writ above mentioned 'till you come to the Words) to the Damage of the said *TC* Forty Pounds, and thereof he brought his Suit, &c. And the said *E B* the now Defendant, by *Edmund Hadsell* his Attorney, came and defended the Force and Injury, when, &c, and pleaded, that he could not deny the Action of the said *TC* nor but that the said *Thomas* was and for ten Years last past

had been seized of the said Manor of *Aylesford* with the Appurtenances in his Demesne as of a Fee, nor but that the said Manor, with the Appurtenances, then was, and for so long a Time as there had been no Remembrance of any Man to the contrary, had been antient Demesne of the Crown of *England*, nor but that all the Lands and Tenements, which were held of the said Manor, were Time out of mind, pleadable and impleaded in the Court of the Manor aforesaid, before the Steward thereof, for the Time being, by His Majesty's Writ of Right Close, and not elsewhere, according to the Custom of the said Manor, Time out of mind, used and approved of, and that the Manor, with the Tenements, and Rents aforesaid, specified in the said Writ of Entry, at the Time of sueing out of the same, and at the Time of the said Recovery thereupon had, and suffered, were held of the said *W. C.* as of his Manor of *Aylesford* aforesaid, and during the Time aforesaid, till the Day of Sueing out the said Writ, had been pleadable and impleaded in the Court of the said Manor, according to the Custom of the same Manor of *Aylesford*; as the said *T. C.* had above alledged in his Writ and Declaration aforesaid, *therefore it was adjudged*, that the said *T. C.* have again his said Court, (that is) that

The Judge
for the Plain-
tiff, in the
Writ of Dis-
ceit.

that the Manor, Rents, and Tenements aforesaid, with the Appurtenances specified in the said Writ of Entry, be pleaded, removed, and brought back again into the said Court, within the Jurisdiction thereof, notwithstanding the said Judgment given, upon the said Writ of Entry, in His said late Majesty's Court, at *Westminster* aforesaid, and that the said Recovery be annull'd, and made entirely of no Effect: And that the said *T.* be restored to all Things which he lost, by Reason of the said Judgment, given upon the said Writ of Entry, and that the said *Edward Bathurst* the Defendant, be amerced, as by the Record thereof, now remaining at *Westminster*, in the County of *Middlesex*, Recorded, it doth and may more fully appear. And the said Jurors do further declare upon their said Oath, that afterwards, and before the said Time, when, &c. (namely) on the first Day of *April*, in the thirty fourth Year of the Reign of His present Majesty, *Charles the Second*, now King of *England*, &c. She, the said *Elizabeth Bathurst*, Widow, late Wife of the said *William Bathurst*, deceased, entred into the Manor, and Tenements, with the Appurtenances aforesaid, and was thereof possessed, and that *Elizabeth Bathurst*, Widow, Relict of the said *William Bathurst*, afterwards

The Defendant amerced.

It is further found, that the said *Elizabeth Bathurst*, Relict of the said *William Bathurst*, entered 1 *April*, 24 *Car. II.*

Precedents of Special Verdicts

and on the seventh, by Indenture leased the Premises to the Lessor of the Plaintiff, for five Years.

wards, and before the said Time, when, &c. (namely) on the said seventh Day of the said Month of April, in the thirty fourth Year aforesaid, made, and as her Deed, delivered an Indenture, sealed with her Seal, executed between the said Elizabeth Bathurst last above-named, by the Name of Elizabeth Bathurst, of Battersey, in the County of Surry, Widow, Relict of William Bathurst, late of Elham in the County of Kent, deceased, of the other Part, and Thomas Crampe, by the Name of Thomas Crampe of Lamberhurst, in the County of Kent, Husbandman, of the other Part, bearing Date on the said seventh Day of April, in the said thirty fourth Year, the Tenor of which said Indenture, followeth in these Words; *The Reporter thought it unnecessary to insert this Indenture, it being a Common Lease for five Years, made by Elizabeth Bathurst, to the said Crampe, so that after mentioning the Lease, the Entry goes on thus, and the said Jurors do further declare, upon their said Oath, that the said Elizabeth Bathurst Widow, Relict of the said William Bathurst, is now alive, and in good Health, and then the Entry mentions, that the Jury found the Lease, Entry, and Ouster in the Declaration, and made the proper General Conclusion, but whether, &c.*

and that Elizabeth is now alive.

The

The Matter upon which the Plaintiff's Council insisted in the Argument of this Case, was, that the Indenture made by Paul Bathurst, was void, because there was found no Execution of it, either by Livery, Seisin, Attornment, or otherwise, and by Consequence, the Lands descended to Edward his Son and Heir, and from him, the Lands being Gavel-Kind Lands, to his four Sons, and then the Entry, and Seisin of T. the elder Brother was an Entry, and Seisin of all the other Brothers, as Coparceners with him, and then William the Third Brother, and the Husband of the said Elizabeth, had good Power to devise the third Part to the said Elizabeth, and by Consequence, the Lease made to her by Crampe, and the Lease made by him to the Plaintiff are good: But this was answered by the Defendant's Council, that the Court of themselves can't take Cognizance, what Lands in the County of Kent are of the Custom of Gavel-kind, without a proper Allegation or Proof thereof on Record, according to Littleton, Sect. 265. and see my Lord Cook's Comment thereupon, for of this Opinion was the whole Court.

An Ejectment of a Messuage and
Lands in *Brinton Briningham*, and
Stodey, of the Demile of *Ciceley*
Cooke, and *Mary Cooke*.

Norton, c. Ladd.

Trin. 1 K. Ja. Roll 695.

L. 756.
Verdict as to
part, for the
Plaintiff.

AS to nine Acres, three Rood and an half, with the Appurtenances, part of the Tenements specified in the within Declaration, with the Appurtenances, the said Jurors declare upon their Oath, that the laid *John Ladd* is *Guilty* of the Trespass and Ejectment within written, in the nine Acres, three Rood and an half of Land aforesaid, with the Appurtenances, as the said *John Norton* doth within complain against him; and they Assess the Damages of the said *John Norton*, by reason of the said Trespass, and Ejectment, besides his Expences, and Costs, laid out by him, about his Suit, in that particular to Six Pence, and for his Expences and Costs, to forty Shillings, and as to one Garden, one Orchard, two Acres, and three Rood of Land, ten Acres of Meadow, and twenty Acres of Pasture, with the Appurtenances, other part

part of the Tenements specified in the within Declaration, with the Appurtenances, *they declare* upon their said Oath, that the said *John Ladd*, is not *Guilty* as to another part, not guilty. of the within written Trespass and Eject-
ment, in the said one Garden, one Or-
chard, two Acres and three Rood of
Land, ten Acres of Meadow, and twen-
ty Acres of Pasture, with the Appurte-
nances, in such Manner and Form as the
said *John Ladd* hath within alledg'd
in his Plea; and as to one Messuage, thir-
ty Seven Acres and one Rood and an
half of Land, residue of the Tenements,
with the Appurtenances within mention-
ed in the said Declaration, the said *Ju-
rors* do further *declare* upon their said
Oath, that long before the said within
written Time, when the within specified
Lease was made, one *Edmund Cook*, se-
nior, was seized in his Demesne, as of a
Fee, at the Will of the Lord of the
Manor of *Thornege cum membris*, in the
County of *Norfolk*, according to the
custom of the Manor aforesaid, of and
the said one Messuage, thirty seven Acres,
one Rood and an half of Land, with
the Appurtenances aforesaid, in *Brinton*
Briningham, and *Stodey*, being customa-
ry Tenements, held of the Lord of the
Manor aforesaid, and Parcel of the Manor
of *Thornege cum membris*, in the said
County of *Norfolk*, and demised, and
demisable,

Precedents of Special Verdicts

demisable, by the Lord of the Manor, or his Steward thereof, for the Time being, by a Copy of the Court Rolls of the said Manor, to any Person or Persons whatsoever, willing to take the same in Fee Simple, or otherwise, at the Will of the Lord, according to the Custom of the Manor aforesaid ; and the said *Edmund Cook* senior, being thus seized thereof, and having Issue, three Sons, of his Body lawfully begotten, *Robert Cook*, *Edmund Cook*, and *John Cook*, and three Daughters, *Cicely*, *Ellen*, and *Alice*, he, the said *Edmund Cook*, afterwards, and before the within written Time, when the within mentioned Lease was made, at the Court of the Manor of *Thornegcum membris* aforesaid, held there on the fifth Day of *October*, in the Year of our Lord, One thousand six hundred fifty nine, personally, and in open Court, before the whole Homage, surrendered into the Hands of the Lord of the Manor aforesaid, by the Hands of the Steward of the Court, all his Customary Messuages, Lands, and Tenements whatsoever, as well in Possession as in Reversion, within that Manor, by Copy of the Court Rolls, according to the Custom of the Manor aforesaid, to such Use, or Uses, as he should by his last Will and Testament in writing limit or appoint, and that the said *Edmund Cook*, Senior, had then

That he had three Sons, viz. *Robert*, *Edmund*, and *John*, and three Daughters, *Cicely*, *Ellen*, and *Alice*.

That on the fifth of October, 1659, he surrendered to the use of his Will.

Anne

Ann his Wife, and afterwards, (namely)
On the ninth Day of June, in the Year
of our Lord, One thousand six hundred
sixty eight, made and ordained his last
Will and Testament in Writing, and
thereby gave and devised, in these fol-
lowing English words, (to wit) I give The Will of
and bequeath, to Anne my dear and Edmund Cook,
well beloved Wife, all, and every my bec verba. the Elder, in

Houses, Barns, Stables, Out Houses,
Offices, Yards, Gardens, Orchards,
Lands, Tenements, and Hereditaments
whatsoever, within the County of Nor-
folk, of me, the said Edmund, for, and
during the Term of her natural Life,
except such Lands, and such Room and
Rooms, as be hereafter excepted, upon
Condition notwithstanding, (that is to
say) She, my said Wife, paying unto
Edmund Cook, my Son, year and year-
ly, during the Term of her natural Life,
the Sum of ten Pounds : And further, I
give and bequeath unto my Son Edmund,
all my said Houses, Barns, Stables,
Out Houses, Offices, Yards, Gardens,
Orchards, Lands, Tenements, and He-
reditaments whatsoever, situate, lying,
and being, within the said County, and
hereby given unto Anne, my said Wife,
for Term of her natural Life, to have,
likewise hold, and enjoy the same, and
every Parcel thereof, to him the said
Edward my Son, and his Heirs for ever,

as

Precedents of Special Verdicts

as by the said last Will and Testament, of the said *Edmund Cooke* the Father, now shewn here in Court, and given in Evidence, it doth more fully appear;

That the Testator died on the first of ~~Aug~~ ^{Sept} 1668.

And the said Jurors, do further declare upon their said Oath, that after the said first Day of *August*, in the said Year of our Lord, One thousand six hundred and sixty Eight, the said *Edmund Cook*, the Testator, died at *Brinton* aforesaid, after whose Death, (namely) at a Court specially held for the said Manor of *Thorneweg cum membris*, on the eighth Day of *May*, in the twenty fourth Year of the Reign of his present Majesty, *Charles the Second*, now King of *England, &c.* the said *Edmund Cook*, the Son of the said *Edmund Cook*, deceased, came, and brought into the same Court, the said last Will and Testament of the said *Edmund Cook*, deceased, and craved the Favour of the Lord of the said Manor, to admit him Tenant to the Remainder of the said one Messuage, thirty seven Acres, and one Rood and a half of Land, with the Appurtenances, whereupon the said *Edmund Cook* the Son, at the same Court of the Manor aforesaid, held at the said Manor, on the Day, and Year, last above mentioned, was admitted Tenant, to the said Remainder, of the said Tenements, with the Appurtenances, to hold, to him, and his Heirs, after the decease

That the said *Edmund Cook*, the Son, was admitted to the Reversion devised to him upon producing the Will at the Court of the Manor, on the eighth of *May*, 24 Car. II.

the decease of the said *Anne*, according to
 the Custom of the Manor aforesaid, and
 the said Remainder was then and there
 granted to the said *Edmund*, the Son,
 by the Lord of the Manor, according to
 the Custom of the Manor aforesaid, to
 hold the said Tenements, with the Ap-
 purtenances, to the said *Edmund* the
 Son, and his Heirs, after the decease of
 the said *Anne*, according to the Intent
 and Purpose of the Will aforesaid, at
 the will of the Lord, according to the
 Custom of the said Manor, as by the
 Court Rolls of the said Court, made as by the Co-
 thereof, here brought and shewn to this py of the
 Court, and read, and given in Evidence, &c.
 to the said *Jurors*, doth more fully ap-
 pear, whereby the said *Edmund* the
 Son, was seized of the said Remainder,
 as the Law requires; and being thus
 seized thereof, afterwards, (to wit (on
 the same Day, and Year last above men-
 tioned, he, the said *Edmund Cook*, the
 Son, came to the said Court, of the Ma-
 nor aforesaid, in his own Person, and in
 open Court, surrendered into the Hands
 of the Lord of the Manor aforesaid,
 by the Hands of the Steward of that
 Manor, the said one Messuage, thirty
 seven Acres, one Rood and an half of
 Land, with the Appurtenances, to such
 Use or Uses as he should by his last
 Will, and Testament in writing, limit,
 and

That at the
 same Court,
 the said *Ed-
 mund*, the Son
 surrendered to
 the Use of his
 Will.

Precedents of Special Verdicts

and appoint, according to the Custom of the Manor aforesaid. And the said *Jurors* do further declare, upon their said Oath, that the said *Edmund Cook*, the Son, afterwards, (*namely*) on the nineteenth Day of *May*, in the Year of our Lord, One thousand six hundred seventy four, made his last Will and Testament, in writing, and thereby gave, and devised, in these *English Words*, following, (*viz.*)

*I give and bequeath unto Alice Cook, my well beloved Sister, all my Lands, Houses, Tenements, and Hereditaments whatsoever, for, and during the Term of her natural Life, after the Decease of Anne Cook, my Mother. Item, I give and bequeath, unto John Cook, my well beloved Brother, the whole Remainder of all those Lands and Tenements, which I have given to Alice Cook my Sister for Life, if so be that he shall survive my Sister Alice, but if it shall happen, that he shall depart this Life before my Sister Alice, then my Will and Mind is, that the said whole Remainder and Reversion of all the said Lands and Tenements given to him, shall be to the only Use and Benefit of my Sisters, Cicely, Ellen, and Alice, and to their Heirs for ever, as by the said last Will and Testament of the said *Edmund*, the Son, now brought here and shewn to this Court, and read, and given in*

his Will set
forth in his
verbo.

in Evidence to the the said *Jury*, it doth more fully appear ; and the said *Edmund*, the Son, afterwards, (namely) on the first Day of *June*, in the aforesaid Year of our Lord, died at *Brinton* aforesaid, without Issue of his Body lawfully begotten. And the said *Jurors* upon their said Oath, do further declare, that the said *Cicely*, *Ellen*, and *Alice*, Sisters to the said *Edmund*, the Son, afterwards, (namely) on the first Day of *August*, in the Year of our Lord, One thousand six hundred seventy five, died at *Brinton* aforesaid, without any Issue of their or either of their Bodies, lawfully begotten ; and the said *Anne Cook*, Widow, the Mother, survived the said *Cicely*, *Ellen*, and *Alice*, and afterwards, (namely) on the first Day of *September*, in the Year of our Lord 1675, the said *Anne Cook* died at *Brinton* aforesaid, and that afterwards, (namely) on the nineteenth Day of *January*, in the Year of our Lord, One thousand six hundred and eighty, the said *John Cook*, Brother to the said *Edmund Cook* the Son deceased, came into the Court of the said Manor, of *Thorne cum membris* aforesaid, held on the same Day and Year, last mentioned, and brought into that Court, the last Will, and Testament, of the said *Edmund*, the Son, his Brother, made in Writing, bearing Date, on the

That *Edmund* the Son died 1 *June*, 1674. and that the said Sisters on the first of *August*, 1675. died without Issue. The first of *September*, *Anne*, the Mother died.

That the said *John Cook* the Brother of *Edmund*, upon producug his Brother's Will was admitted.

Precedents of Special Verdicts

nineteenth Day of *May*, in the Year of our Lord, One thousand six hundred and seventy four, aforesaid, and the said *John Cook* craved the Favour of the Lord of the said Manor, to admit him Tenant of the Premises, according to the Intent and Purport of the said Surrender and last Will of the said *Edmund Cook*, the Son ; whereupon the said *John Cook*, was at the said Court, of the same Manor, there held, on the Day and Year last above mentioned, admitted a Tenant to the said one Messuage, thirty seven Acres, one Rood and an half of Land, with the Appurtenances, according to the Custom of the Manor aforesaid ; and the said Tenements, with the Appurtenances, were then and there granted, in the same Court, to the said *John Cook*, by the Lord of the said Manor, according to the Custom thereof, to hold to the said *John*, according to the Intent and Purport of the said Surrender and last Will of the said *Edmund Cook* the Son, at the will of the Lord, according to the Custom of the Manor aforesaid, as by the Copy of the Court Rolls last above mentioned made thereupon, now shewn, brought here into Court, and given in Evidence to the said *Jurors*, more fully may appear, whereby the said *John Cook* entred into the said Tenements, with the Appurtenances last above mentioned, and was seized

as by the Copy of the Court Rolls,
&c.

seized thereof, as the Law requires ; and being thereof thus seized, he the said *John Cook*, afterwards, (*namely*) on the twenty sixth Day of *February*, in the Year of our Lord, One thousand six hundred eighty two, by his writing, purporting a letter of Attorney, under the Hand and Seal of the said *John Cook*, bearing Date, the Day and Year last above mentioned, and attested by *J. C.* Senior, and *F. W.* Junior, sufficiently authorized one *J. C.* Junior, Gentleman, a customary Tenant of the Manor aforesaid, to surrender into the Hands of the Lord of the said Manor, according to the custom of that Manor, the said one Messuage, thirty seven Acres, and one Rood and an half of Land, to the Use, and Behoof of the said *John Ladd*, a Surgeon, his Heirs and Assigns for ever, upon this Condition, that if the said *John Cook*, his Heirs, Executors, and Assigns, or any of them, shou'd pay, or cause to be paid, to the said *John Ladd*, his Executors, Administrators, or Assigns, the Sum of One hundred and six Pounds, upon the twenty seventh Day of *February*, which shou'd be in the Year of our Lord, One thousand six hundred eighty three, at, or in the dwelling House of the said *John Ladd*, situate in *Norwich* aforesaid, that then the said last-mentioned Surrender should be void, or otherwise

That the said
John Cook, the
sixth of Februa-
ry, 1682,
made a Letter
of Attorney,
&c. to one
J. C. a Custo-
mary Tenant,
&c. to surren-
der to the Use
of *John Ladd*,
and his Heirs,
upon Condi-
tion to be void
upon Payment
of 106 l. 27th
of February,
1683.

wise should remain in its full Force, and afterwards, (*to wit*) on the fourth Day of *March*, in the Year of our Lord, One thousand six hundred eighty two, the said *John Crito*, Junior, came there into the Court of the Manor of *Thornegcum membris* aforesaid, held at that Manor, on the sixth Day of *March*, in the Year of our Lord, One thousand six hundred eighty two, before *William Burleigh*, Esquire, Steward, and by virtue of the said Writing, or Letter of Attorney made to him, under the Hand and Seal of the said *John Cook*, bearing Date on the twenty sixth Day of *February*, in the said Year of our Lord One thousand six hundred eighty two, according to the Custom of the Manor aforesaid, in the Name of the said *John Cook*, surrendered into the Hands of the Lord of the said Manor, by the Hands of the said Steward, the Lands and Tenements last above mentioned, to the Use and Behoof of the said *John Ladd*, his Heirs, and Assigns for ever, *upon this Condition*, that if the said *John Cook*, his Heirs, Executors, Administrators, or Assigns, or any of them, shou'd pay, or cause to be paid, to the said *John Ladd*, his Executors, Administrators, or Assigns, the Sum of One hundred and six Pounds, upon the twenty seventh Day of *February*, which shou'd be in the Year of our Lord,

Lord, One thousand six hundred eighty three, at, or in the Dwelling-House of the said *John Ladd*, situate in *Norwich* aforesaid, that then the said last mentioned Surrender should be void, otherwise should remain in full Force: And the *Jurors* further declare upon their said Oath, That the said *John Cook* afterwards, and before the within written Time when the within specified Lease was made. (*namely*) on the twentieth Day of *Febru-
ary*, in the first Year of the Reign of his present Majesty *James the Second*, King of *England*, &c. died at *Brinton* aforesaid, without Issue of his Body lawfully begotten, and that the said *Robert Cook* then and there likewise died, and that afterwards, (*to wit*) on the twelfth Day of *May*, in the first Year of the Reign of his said present Majesty, the said *John Ladd* came into the Court of the said Manor, held at the said Manor, at the Day and Year last above mentioned, and shew'd, that neither the said Sum of One hundred and six Pounds, or any Part thereof, was paid, at the Day and Year above mentioned, for the Payment thereof, according to the Intent and Purport of the last mentioned Surrender, and prayed the Favour of the Lord of the said Manor to admit him Tenant to the Premises aforesaid; and thereupon the said *John Ladd* was at the same Court of the Manor aforesaid,

That *John Cook* died the 20th of *Febru-
ary*, 1 King *James the Second*, without Issue, and *Ro-
bert Cook* died at the same time.

That after-
wards on the 12th of *May*, 1 King *James the Second*, *John Ladd* came into Court, and was admitted."

admitted Tenant to the said one Messuage, thirty seven Acres and a Rood and an half of Land, with the Appurtenances, according to the Custom of the Manor aforesaid, and those Tenements was then and there granted to the said *John Ladd* in the same Court by the Lord of the Manor, according to the Custom of that Manor, *to hold* to the said *John Ladd*, his Heirs, and Assigns, according to the Intent and Purport of the last mentioned Surrender, at the Will of the Lord, according to the Custom of the Manor aforesaid, as by the Copy of the Court Rolls last above mentioned made thereon,

as by the Copy of the Court Rolls.

now shewn and brought into this Court, and given in Evidence to the said *Jurors*, more fully may appear; whereupon the said *John Ladd* entered into the said Messuage and Lands, with the Appurtenances last above mentioned, and was seised thereof, as the Law requires: And the said *Jurors* do upon their said Oath further declare, That *Cicely Cook*, and *Mary Cook*, named in the within Declaration, are

That the Lef-
sors of the
Cousins, and
Heirs to the
said *Edmund Cook*, the Son, and of *John Cook*, and
to the said *Cicely*, *Ellen*, and *Alice*,
Daughters of the said *Edmund Cook* the
Elder, (that is to say) Daughters and
Heirs of *Robert Cook*, Brother to the
said *Edmund* the Son, and to *John Cook*,
which said *Robert* was the eldest Son,
and Heir to the said *Edmund Cook* the
elder,

elder, Grandfather of the said *Cicely* and *Mary* named in the Declaration aforesaid, and Father to the said *Robert* and *Edmund* Junior, and *John Cook*, and that the said *John Ladd* claims his Right, Title, and Interest, in the Premises aforesaid, by virtue of the Surrender and Admission last above mentioned: And the said *Jurors* do further declare upon their said Oath, That the said *Cicely Cook*, and *Mary Cook*, named in the Declaration aforesaid, after the Decease of the said *John Cook*, and before the said Time when the Lease aforesaid was made, (namely) on the first Day of *March*, in the first Year of the Reign of his said present Majesty, entered into the said one Messuage, and thirty seven Acres and a Rood and an half of Land, with the Appurtenances, and was seised thereof, as the Law requires; and further it was mentioned, That they found the Lease, Entry, and Oyster; and if the Defendant be guilty of the Trespass and Ejectment, &c. then they find him so, and if not, then they find him not guilty; this is the proper Conclusion, for which I refer you to the first President, of a Special Verdict.

The sole Question upon this Case was, *Litt. 762. 3.*
 whether an Estate for Life, or in Fee, *The Case.*
 pass to *John Cook*, by the Will of *Edmund his Brother*, by the Words, I give the whole Remainder of all those Lands;

Precedents of Special Verdicts

and Tenements, which I have given to my Sister *Alice*; and the Case was argued by Holt, King's Serjeant, for the Plaintiff, and Birch for the Defendant, and afterwards by Baldock for the Plaintiff, and Levinz for the Defendant, and Judgment was given for the Defendant by the Opinion of the whole Court, for they apprehended that the Devise to John Cook, was all one in Effect, as if the Testator had devised to John, all the Residue of his Estate, in all the Lands which he had devised to his Sister *Alice*, and that the Words, whole Remainder, are properly Relative to the Estate in him undisposed of to his Sister *Alice*, and that those Words evidently do not relate to the Quantity of the Lands, that the Testator intended to devise to his Brother John, for it is plain and without doubt, that he devised all the Lands to his Sister *Alice*, and it is also as plain and express, that he had devised all the Lands to his Brother, which he had devised to his Sister *Alice*, those Words properly and naturally relate to the Quantity of the Estate, which the Testator intended to give his Brother John, (that is) all his Remainder, which is all one in Effect, as all his Estate; for if the Words, whole Remainder, shall be only Relative to the Lands which he intended to devise to John, that Devise would be altogether ineffectual, for he has

has no such Remainder; for it is impossible, that there should be a Remainder or Residue, which is all one in this Case of that which is devised to Alice, for all was devised to her already, and therefore it seems to be of necessity, that these Words should be construed to relate to the Estate that the Testator intended to give to his Brother; and as to what hath been mentioned, that this was a Construction to the Disinheritance of the Heir at Law, it was said, That was entirely out of the Question, because there could be no doubt that the Heir at Law was disinherited, either by the Devise to the Brother or to the Sisters, for the one or the other hath a Fee Simple, upon a Contingency.

Eastcourt v. Weeks.

Trin. 10 King William III. Roll. 35.

Declare upon their said Oath, that the Tenements mentioned in the within written Declaration are and always have been Customary Tenements, and parcel of the Manor of Newton in the County of Wilts, of which said Manor Sir William Eastcourt Knight was seised in his Demesne, as of a Fee; and that one William Weeks was seised of the said customary Tenements for the Term of his natural Life, by Copy of the Court

Special Verdict that the Tenements in Question, are Copy-hold, Parcel of the Mannor of Newton.

That William Eastcourt was seised in Fee of the said Manor, and William Weeks was seised of the Copyhold for Life.

Rolls of that Manor, at the Will of the Lord, according to the Custom of the said Manor ; and that the said *William Weeks* being thus seised of the said

That he mar-
ried *Eliz. Kite.*

customary Tenements, he the said *William Weeks* married one *Elizabeth Kite*, and afterwards the said *William*

That *William Eastcourt* died
seised of the
Manor, which
descended to
Amy Eastcourt,
the Lessor.

That *William Weeks* permit-
ted the Messu-
age to be ruin-
ous, and on
the 25th of
Nov. 1690,
demised the
Copyhold, &c.
to *E B* for a
Year, and so
from Year to
Year, &c.

descended to one *Amy Eastcourt*, and to the within named *Anne Eastcourt* the Plaintiff's Lessor, as Sister and Heirs of *William Eastcourt*, and that afterwards the said *William Weeks* premitted the within mentioned Messuage to be ruinous and out of repair and in Decay, for want of necessary repairs thereof, and that afterwards (*to wit*) on the twenty fifth Day of November in the Year of our Lord one thousand six hundred and ninety, the said *William Weeks*, by his Deed shewn to the said Jurors in Evidence, demised all the said customary Tenements to one *Edward Browne*, *to have and to hold* to the said *Edward Browne* from the Feast of St. Michael then last past, for and during the Term of one whole Year from thence next ensuing ; and so from Year to Year for the Term of ten Years then next ensuing, *if the said William Weeks should so long happen to live*, at the Yearly Rent of ten Pounds to be paid to the said

William

William Weeks for the same; and afterwards the said *Amy Eastcourt* died seised of a Moiety of the said Manor in her Demesne, as of a Fee; after whose death the said Moiety descended to the said

That *Amy Eastcourt* died, and that her Moiety descended to the Lessor of the Plaintiff.

Anne Eastcourt, as Sister and Heir to the said *Amy*, whereby the said *Anne Eastcourt* was and now is sole seised of the Manor aforesaid in her Demesne, as of a Fee; and that afterwards on the first Day of *February*, in the Year of our Lord one thousand six hundred and forty six, the said *William Weeks* died seised, as aforesaid, of the said customary Tenements, and that within the Manor aforesaid there is, and for so long a Time that there is no Memory of any Man to the contrary, there hath been, and was a Custom used and approved of, that the Wife of every customary Tenant who died seised of any customary Tenements, parcel of that Manor of an Estate therein for the Term of his Life, hath used and ought to have and enjoy all such customary Tenements, whereof her Husband died so seised, for and during the Time of her Widowhood, at the Will the Lord of the Manor for the Time being, according to the Custom of that Manor; and also that the Executors and Administrators of every such customary Tenant dying seised of such Estate, as aforesaid, of and in any

That *William Weeks* died seised the 1st of Feb. 1696.

That there is a Custom within that Manor, that the Wife of every Customary Tenant dying seised for Life, shall hold the Lands during her Widowhood; and that the Executors of such Tenant (if he died between Christmas and Ladyday) shall hold 'till the next Michaelmas following.

Precedents of Special Verdicts

any customary Tenements, parcel of the Manor aforesaid, at any Time after the Feast of our Lord God, and before the Feast of the *Annunciation of the Blessed Virgin Mary*, hath been accustomed, and ought to have and enjoy all such customary Tenements, till the Feast of *Saint Michael the Archangel*, next after the Death of such customary Tenant so dying seised, and no longer, and that after the several Deaths

That the Lessor of the Plaintiff entered for the Forfeiture after the Death of *William Eastcourt, Anne Eastcourt, and William Weeks*, and before the next *Michaelmas* after the Death of *William Weeks*.

That the Messuage aforesaid being thus out of repair, continued thus out of repair and in decay, for want of necessary repairing the same, till the said Time of the Entry made by the said *Anne Eastcourt*, as aforesaid: And the said Jurors do further declare upon their said Oath, that the said Messuage now

is,

That the Messuage at the time of the Entry of the Lessor was out of Repair, but is now in good Repair.

is, and for the space of a Month last past hath been, well and sufficiently repaired, at the Costs and Charges of the said *Elizabeth*, who was Wife of the said *William Weeks* at the Time of his Death; and that after the Entry made as aforesaid (*to wit*,) on the within written nineteenth Day of *January*, in the ninth Year of the Reign of his said present Majesty, the said *Anne Eastcourt* demised the said customary Tenements, to the within named *John Eastcourt*, *to have and to hold* to the said *John*, from the last Day of *December*, then last past, for the Term of seven Years from thence next ensuing, by Virtue of which

That the Lessor made the Lease to the Plaintiff, on the 19th of Jan. 9 Will. III. and that the Plaintiff was possessed, 'till the Defendant, as Servant to the said *Elizabeth* the Wife of the said *William Weeks* entered, &c.

said Demise, he the said *John*, entered into the said customary Tenements, and was possessed thereof, until the within named *Alice Weeks*, as Servant to the said *Elizabeth Weeks*, who was Wife to the said *William Weeks*, and by her special command entered into the said customary Tenements in and upon the Possession of the said *John*, and ejected, drove out, and removed him from his said Farm therein, as the said *John Eastcourt* hath therein declared; and the said Jurors do upon their said Oath further declare, That the said *Elizabeth*, who was Wife to the said *William Weeks*, at the Time of his Death, now is, and ever since the Death of the said *William Weeks*,

And that the said *Elizabeth* is now alive, and not married after the Death of her Husband.

hath

hath been, and remained a Widow unmarried, and in good Health ; and then the Jurors conclude as usual.

The CASE,
1 Litt. 802,
3. 4

Judgment after several Arguments, at the Bar, was given for the Defendant in this Case by the Opinion of three of the Judges, (*to wit*) *Treby, Chief Justice J. Nevil, and J. Blencow*, against the Opinion of *J. Powel*, and chiefly upon this Reason ; that altho Permissive Waste, and making a Lease were Forfeitures, yet they were not such Forfeitures which determined the Copyhold Estate, but that it is in the Election of the Lord at that Time, to take the Advantage of the Forfeiture if he thinks fit ; but if he will not, his Heirs shall not have such Election ; and then the Election, in this Case ought to have been executed in the Life-Time of the other *Coparcener*, for they being but one Heir, they ought to have entred in the Life-Time, of the other *Coparcener*, and there can be no entry for a Moiety, as they are but one Heir, the Cases upon which the Court principally relied, were as follow. The *Case of Cornwallis against Horwood Latch*, 226, *Palmer*, 460, *Ben. select cases* 148, 2, *Cro. 301*, *Lady Mountague's Case*.

And note, the *Chief Justice* made a Distinction when a Copy-holder makes a Feoffment, or any other Act which was

was always inconsistent with his Estate, there the *Copybold* is absolute determined, and an Advantage of it may be taken at any Time; but it is otherwise in making a Lease for Years, for the *Copyholder* remains a *Copyholder* notwithstanding such Lease, otherwise of a Lease for Life; but if the *Copyholder* will accept a Lease for Years from another, that is a Determination of his Estate, he also said that he much doubted the Case in *Co. Lit.* 53, B. where it is said, That the *Aunt* and *Niece* may join in an Action of *Waste*, for all the Books there cited as Authorities are not to the purpose, except one (*viz.*) *Brook, Waste* 41; and he said that was a strange Case, for there two joined in an Action of *Waste*, where one of them could not recover for Part, [*viz.*] Damages; but the Resolution in that Case was only that the right to recover Damages survived, but in the Case here the Question is whether the right to recover the Land it self shall survive, where it is such a Forfeiture, whereby the *Copybold* Estate is determined, there the Forfeiture shall go over; but other Forfeitures not, for they are confined to those Persons against whom the Forfeiture is committed.

King v. Dillifton.

Trin. 1 King James, Roll 1322.

Lat. 765.

That the Tenements in question are Copyhold Lands of the Manor of *Sweffling-Campsey*.

That *Henry Warner and Elizabeth his Wife* were seized in right of *Elizabeth* for her Life.

AND the Jurors of the Jury, whereof mention is within made being called, likewise appeared, who being chosen tried and sworn to declare the Truth of the within Contents, declare upon their Oath, that the within written Tenements, with the Appurtenances, wherein the Trespass and Ejectment within written are supposed to have been committed, are and for so long a Time as there is no remembrance of any Man to the contrary, have been parcel and customary Tenements of the Manor of *Sweffling-Campsey*, with the Appurtenances in the said County of *Suffolk*, and have been during all that Time demised and demisable by a Copy of the Court Rolls of that Manor, by the Lord or Lady thereof for the Time being, to whatsoever Person or Persons willing to take the same in Fee-simple or otherwise, at the Will of the Lord or Lady, according to the Custom of the Manor aforesaid, and that before the within written Time when the Trespass and Ejectment aforesaid are supposed to have been done, one *Henry Warner and Elizabeth his Wife* in

in Right of the said *Elizabeth*, were seised of the Tenements within written with the Appurtenances, in which, &c. in their Demesne as of a Freehold, for the Term of the Life of the said *Elizabeth*, the Remainder thereof belonging to *John Ballett* and his Heirs, at the Will of the Lord, according to the Custom of the Manor aforesaid; *And the said Jurors* do upon their said Oath further declare, that within the Manor aforesaid, there now is and for so long a Time as there is no memory of any Man to the contrary, there hath been such a Custom, that if any Surrender of any customary Lands or Tenements of the Manor aforesaid be made to the Lord or Lady of the said Manor for the Time being, out of the Court of the said Manor, according to the Custom thereof, it should be presented by the Homage of the Court of the Manor aforesaid, at the first Court of the said Manor next after such Surrender, to be held at that Manor; and that after such Presentment made in the manner aforesaid, the first publick Proclamation should be made in the same first Court, that such Person who hath a Right to be admitted to the Tenements aforesaid so surrender'd, should appear at that Court, and pray to be admitted to the customary Tenements comprised in such Surrender, according to the Intent and Purport thereof:

And

Remainder to
John Ballett
in Fee.

That within
the Manor
there is a Cus-
tom that if any
Surrender be
presented at
the next Court,
that the first
Proclamation
shall be that the
Person who
hath a Right
shall come and
pray to be ad-
mitted, &c.

and if he will not, &c. then a second, and so a third

And if such Person who hath a Right to be admitted to the Tenements aforesaid so surrendered came not at the same first Court, and prayed to be admitted nor was admitted to the Tenements with the Appurtenances mentioned in such Surrender as aforesaid; then at the second Court of the said Manor, to be held next after such Surrender another publick Proclamation shall be made, That such Person that hath a Right to be admitted as aforesaid, should appear at that same Court, and should pray to be admitted to the Customary Tenements, according to the Intent and Purpose of the Surrender aforesaid: And if such Persons, who had a Right to be admitted as aforesaid, came not at such second Court, and prayed to be admitted; nor was admitted to the Tenements with the Appurtenances mentioned in such Surrender, as aforesaid; then at the third Court of the said Manor next after such Surrender held at the Manor aforesaid, there should be another publick Proclamation made, That such Person, who

had a Right to be admitted as aforesaid, should come at the same third Court, and pray to be admitted to the Tenements mentioned in such Surrender; and the Steward of the Premises to command the Bailiff to seize and prayed to be admitted, nor was admitted to the said Tenements, with the Appurtenances, the Use of the Lord.

Appurtenances, then the Steward of the said Court for the Time being commanded, and by the Custom of the Manor aforesaid therein used and approved of for so long a time as there is no remembrance of any Man to the contrary, hath used to command the Bailiff of the said Manor for the Time being, to seize such Tenements so surrendered into the Hands of the Lord or Lady of the said Manor for the time being. *And the said Jurors* do upon their said Oath further declare, that the said *Henry Warner*, and *Elizabeth*, in Right of the said *Elizabeth*, being seised of the Tenements within written, with the Appurtenances, wherein, &c. in the manner aforesaid, the remainder thereof belonging to the said *John Ballet* and his Heirs in the manner aforesaid, they the said *Henry Warner* and *Elizabeth* and *John Ballet*, before the within written Time, when, &c. (*that is to say*) on the sixth Day of *April*, in the thirty fourth Year of the Reign of his late Majesty, surrender'd out of Court, according to the Custom of the Manor aforesaid, into the Hands of the said *Alice*, then lawfully being the Lady of the Manor aforesaid, the within written Tenements with the Appurtenances, wherein, &c. to the Use of one *Robert Freeman* and his Heirs for ever; and that the said *Robert Freeman* after the Surrender

That the said *Henry Warner* and *Elizabeth*, and *John Ballet*, the 6th of April, An. 34 Car. II. surrendered out of Court into the Hands of the Lessor of the Plaintiff, she being the Lady of the Manor.

To the Use of
Robert Freeman
and his Heirs.

That *Robert Freeman* died before any Court, and *John Freeman* was his Son and Heir, and within Age.

Surrender made in the manner aforesaid, and before any Court of the said Manor, was held after making the said Surrender, (*that is to say*) on the first Day of *August*, in the thirty fourth Year of the Reign of his said late Majesty, died, and that one *John Freeman* was and is the only Son and Heir of the said *Robert Freeman*; and as such Son and Heir of the said *Robert* had a Right to be admitted to the Tenements aforesaid, with the Appurtenances, wherein, &c. according to the Form and Effect of the said Surrender made in the manner aforesaid. *And the said Jurors* do upon their said Oath further declare, That the said *John Freeman*, at the Time of the Death of the said *Robert Freeman* his Father, was and now is within the Age of twenty one Years, and that the said *Robert Freeman* is dead; and the said *John Freeman* being within the Age of twenty one Years, and he the said *John Freeman* having a Right to be admitted to the Tenements aforesaid, with the Appurtenances, the said Surrender made by the said *Henry Warner*, and *Elizabeth* and *John Ballett* into the Hands of the said *Alice*, as aforesaid, afterwards, (*that is to say*,) at the Court of the Manor aforesaid, next after the said Surrender made as aforesaid, held at that Manor on the fifth Day of *September*, in the thirty

That the Surrender was presented at the next Court, the 8th of September, 34 Car. II.

thirty fourth Year of the Reign of his said late Majesty, was duly and according to the Custom of the Manor aforesaid, presented by the Homage of the same Court, and immediately after such Present-
ment of the said Surrender, made in the same Court, by the Homage aforesaid, the first publick Proclamation was then made in the same Court, That such Person who had a Right to be admitted to the said Tenements aforesaid with the Appurte-
nances, should come at the same Court there held as aforesaid, and pray to be ad-
mitted to the said Tenements surrendred as aforesaid ; and that he appeared not at

That the first
Proclamation
was made at
that same
Court.

And that no
Person came,
&c.

that same Court, nor was admitted to the said Tenements ; whereupon afterwards, at the second Court of the said Manor next after the said Surrender made as aforesaid, held at that Manor on the thirteenth Day of *June*, in the thirty-fifth Year of the Reign of his said late Majesty, another publick Proclamation was then made in the same Court, that such Persons who had a Right to be admitted to the said Tenements, should come at the same Court there held, as aforesaid, and pray to be admitted to the said Tenements surrendred as aforesaid ; and that no Person came at that same Court, nor was admitted to the said Tenements, with the Appurtenan-
ces ; whereupon afterwards at the third

The like at the
2d Court.

The like at the
3d Court.

Whereupon
the Premises
were seized by
the Bailiffs for
the Use of the
Lessor of the
Plaintiff,

Court of the Manor aforesaid next after making the said Surrender, as aforesaid, held at that Manor, on the twenty-third Day of *October*, in the said thirty-fifth Year of the Reign of his said late Majesty, another publick Proclamation was then made in the same Court, That such Person who had the Right to be admitted to the said Tenements, surrendered as aforesaid, should come at that same Court, there held as aforesaid, and pray to be admitted to the said Tenements surrendered as aforesaid, and that no Person came at that same Court, nor was admitted to the said Tenements, with the Appurtenances; whereupon one *Thomas Clarke* then Bailiff of the said Manor, was commanded by the Steward of the Manor aforesaid, that he should seize the said Tenements, with the Appurtenances into the Hands of the said *Alice*, then Lady of the Manor aforesaid; which said *Thomas Clarke*, afterwards, (*that is to say*) on the first Day of *November*, in the thirty fifth Year aforesaid, entered into the said Tenements, with the Appurtenances, by Virtue of the said Mandate: And the said Jurors do upon their said Oath further declare, that the said *Alice* was at the Time when the said Surrender was made, and ever since hath been, and now is, Lady of the Manor aforesaid, and thereof legally seized;

feised ; and that after the said several Proclamations and the several Defaults made as aforesaid, and before making the within written Demise, (*that is to say*) on the first Day of *April*, in the first Year of the Reign of his said present Majesty within specified, she the said *Alice* being Lady of the said Manor, and the said *John Freeman*, then and now being of the Age of twenty one Years, she the said *Alice* entered into the Tenements within specified, with the Appurtenances, wherein, &c. as forfeited to her, for the Reason aforesaid, and was thereof feised as the Law requires ; " and then they find " the Lease, Entry, and Ouster ; and if " the Defendant be guilty of the Trespass " and Ejectment, then they find him so ; " and if not, then they find him Not " Guilty.

And that she
entered for the
Forfeiture.

*This Precedent is in Lut. 765. But The CASE.
the Case reported in 3d Modern 221.
and the Judgment which was given for
the Defendant in the Common-Pleas
was affirmed in the King's-Bench upon
a Writ of Error. The single Question
was, whether this Custom did so bind
the Infant as to work a Forfeiture ?
The Opinion of three Judges against
the Chief Justice was, that it did not
bind Infants ; and the Reasons for their
Opinions appear to be, That as the*

Right of Infants are much favoured in Law, and their Laches shall not be prejudicial to them, as to Entry or Claim, upon a Presumption that they understand not their Right; the several Reasons for the Judges Opinions, are there at large, to which the Reader is referred to avoid Prolifxity.

Lett. 775.

Hunt v. Bourne, and others.

Hill. 5. K. W. & Q. M. Rol. 763. C. P.

That *Thomas Andrews* was
seised in Fee,
14 Feb. 14
James I. and
by Indenture
conveyed the
Premises.

Declare upon their Oath, that *Thomas Andrews*, on the fourteenth Day of February, in the fourteenth Year of the Reign of his late Majesty *James the First*, late King of *England*, &c. was seised of the Lands and Tenements mentioned in the within written Declaration, in his Demesne, as of a Fee, and being so seised thereof, he the said *Thomas Andrews*, by a certain Indenture bearing Date on the fourteenth Day of February, in the said fourteenth Year of the Reign of the said late King *James the First*, executed between the said *Thomas Andrews*, by the name of *Thomas Andrews of King's Caple*, in the County of *Hereford* Yeoman, of the one part, and *Toby Pavie of King's Caple* aforesaid Yeoman, and *Philip Andrews of Sutton*,

Sutton in the said County Yeoman, of the other part, for the Considerations mentioned in the same Indenture, gave, granted, enfeoffed, and confirmed to the said *Toby Pavie*, and *Philip Andrews*, and their Heirs, the said Lands, and Tenements, to the several Uses declared and specified in the same Indenture, (*that is to say*) to the Use of the said *Thomas Andrews* and *Eleanor* his Wife, for the Term of their natural Lives, and the Life of the longest Heir of them, without Impeachment of Waste, during the Life of the said *Thomas Andrews*; and after their Decease, then to the use of one *Mary Andrews*, mentioned in the said Indenture, Daughter of the said *Thomas Andrews*, and of the Heirs of the Body of the said *Mary*, begotten, or to be begotten, by one *John Gwillym* the younger, mentioned in the said Indenture; and for default of such Issue, then to the Use of the Heirs begotten on the Body of the said *Mary*, and for default of such Issue, then to the Use of one *Elizabeth Tompkins*, another Daughter of the said *Thomas Andrews*, and the Heirs begotten of the Body of the said *Elizabeth*; and for Default of such Issue, then to the Use of *William Tompkins*, eldest Son of the said *Elizabeth Tompkins*, and of the Heirs begotten of the Body of the said *William Tompkins*; and for Default of

To the Use of
himself, and
Eleanor his
Wife, for Life.
Remainder to
Mary An-
drews, his
Daughter, and
the Heirs of
her Body, be-
gotten by one
John Gwillym
the Younger.
Remainder to
the said *Mary*
Andrews, the
Daughter, in
General Tail.

Remainder to
Elizabeth
Tompkins, an-
other Daughter
in General
Tail. Remain-
der to *William*
Tompkins, the
eldest Son of
the said *Eliza-
beth*, in Ge-
neral Tail.

Remainder to such Issue, then to the Use of *John Tompkins*, second Son of the said *Elizabeth*, Son of the said *Elizabeth*, and of the Heirs of the Body begotten of the Body of the said *John Tompkins*; and for Default of such Issue, then to the Use of the right Heirs of the said *Thomas Andrews* for ever, as in the said Indenture it is more fully contained. *And the said Jurors, do upon their said Oath further declare, that by virtue of the said Indenture, and also by force of the Statute for transferring Uses into Possession, publish'd in the Parliament of *Henry the Eighth*, late King of *England*, &c. held at *Westminster*, on the fourth Day of *February*, in the twenty seventh Year of his Reign, they the said *Thomas Andrews*, and *Eleanor* his Wife, became seised of the said Lands and Tenements, mentioned in the said Declaration, in their Demesne, as of a Freehold, for the Term of their natural Lives, the Remainder thereof as in the Manner above limitted, and that after making the said Indenture,*

Th: J. Gwillim,
lym the
Younger, mar-
ried the said
M. A.
and had Issue,
T. G.
That after-
wards, and
before 29 May,
1646, the said
T. A., and his
Wife died.

married the said *Mary Andrews*, and had Issue begotten between them, one *Thomas Gwillim* their eldest Son, and that afterwards, and before the said twenty ninth Day of *May*, in the Year of our Lord, One thousand six hundred forty six, they the said *Thomas Andrews*, and *Eleanor* his Wife died, and that after their Decease,

cease, the said *John Gwillim* the Younger, and *Mary* his Wife, entered into the Lands and Tenements abovementioned in the said Declaration, and were seised thereof in Right of the said *Mary*, in their Demesne, as of a Fee-Tail (*that is to say*) to the said *Mary*, and the Heirs of her Body, begotten by the said *John Gwillim* the Younger, Remainder thereof in the Manner above limitted; and being thus seised thereof, they the said *John Gwillim* and *Mary* his Wife, afterwards, and before the said twenty ninth Day of *May*, in the Year of our Lord, One thousand six hundred forty six, died, and after their Decease the said *Thomas Gwillim* as Son and Heir of the said *Mary*, begotten of her Body, by the said *John Gwillim* the Younger, entered into the Lands and Tenements, with the Appurtenances, and was thereof seised in his Demesne as of a Fee-Tail, the Remainder thereof in the manner above limitted; and being so seised thereof, he, the said *Thomas Gwillim* had Issue begotten of his Body, one *Thomas Gwillim* his Son. *And the said Jurors do upon their said Oath, further declare, That the said Mesfluge, Lands, and Tenements above specified in the said Declaration, and also divers other Mesfluges, Lands, and Tenements, within the said Parish of King's Caple, are held*

That afterwards and before the said 29th of May, *J. G. and his Wife died, whereby the said T. G. their Eldest Son, Entered, and had Issue T. who Entered, &c.*

That the Tenements are held of the Manor of Wormlow, which is ancient Demeince.

Precedents of Special Verdicts

of the said Manor of *Wormelow*; in the said County of *Hereford*, which said Manor now is, and for so long time as there is no Remembrance of any Man to the contrary, hath been of antient Demesne of our Sovereign Lord and Lady, the King and Queen of *England*, and their Predecessors, Kings of *England*; and that the said Tenements have been, during all that time pleadable and impleaded in the Court of the said Manor or Hundred, by their Majesty's Inferiour Writ of *Right Close*, before the Steward, Suitors and Domesmen of the said Manor and Hundred, or their Deputies, or Attornies, and not elsewhere, nor otherwise; and by an antient Custom of the said Manor and Hundred, Time out of Mind, therein used, and approved of, the Fines founded upon Writs of *Right Close* of Meis-
ages, Lands, Meadows, Pastures, Furze, and Heath, within and being held of the said Manor, or appertaining thereto, have been levied, and during the Time aforesaid, have been used and accustomed to be

That 29th of May, 1646. a Fine *Sur Cor-
ceffit*, was levied of the Premises, by Thomas *Guil-
lym* the Father, and his Wife, according to the Cus-
tom, &c. in the said Court of the Manor or
Hundred of *Wormelow* aforesaid, whereof, &c. held at *King's Caple*, within the

and pleadable
by a Writ of
Right Close be-
fore the
Steward, &c.
of the Manor.
That Fines are
levied in that
Court.

the Manor or Hundred aforesaid, according to the said Custom, Time out of Mind, used and approved of, within the said Manor, on the twenty ninth Day of *May*, in the twenty second Year of the Reign of his late Majesty *Charles the First*, King of *England, &c.* before *William Gardiner*, Gentleman, then Deputy to *Walter Kyrle*, Esquire, Chief Steward there, and *Toby Payne*, then Attorney to the Right Honourable the Lord *Viscount Scudamore*, and *Philip Rose*, then Attorney to Sir *Edward Powell*, Knight, and *Thomas Hopkin*, then Attorney to *William Hoskins*, Gentleman, then Suitors and Domesmen of the said Court, and others of his said Majesty's Subjects, then present there, between *William Nurse*, *Sarab* his Wife, and *John Nurse* their Son, Plaintiffs, and the said *Thomas Gwillim* their Father, and *Mabell* his Wife, Deforcients, of the said Messuages, Lands, and Tenements, mentioned in the said Declaration; by which said Fine, the said *Thomas Gwillim* the Father, granted to the said *William Nurse*, and *Sarab* his Wife, and to *John Nurse*, Son of the said *William* and *Sarab*, the Lands and Tenements aforesaid above-mentioned in the said Declaration, being held of the Manor aforesaid, for the Term of the Lives of the said *William Nurse*, and *Sarab* his Wife, and of *John Nurse*, and

whereby *T. G.*
the Father,
granted to *W.*
N. & S. his
Wife, and *J.*
N. their Son,
for their Lives.

Precedents of Special Verdicts

referring an
Annual Rent
of six Pounds.
The Fine in
hæc Verba.

and of the Life of the longer Liver of either of them, thereby reserving an Annual Rent of six Pounds, during the said Term, as it is more fully comprehended in the said Fine, the Tenor of which Fine follows in these Words. “ *Wormlow, ss.* This is a Final Agreement made in the Court of the Right Honourable the Lady *Elizabeth, Countess of Kent*, of her Manor or Hundred of *Wormlow*, held at *King's Caple* within the Manor or Hundred aforesaid, on the twenty ninth Day of *May*, in the twenty second Year of the Reign of our Sovereign Lord *Charles*, by the Grace of God, King of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. before *William Gardiner*, Gentleman, Deputy to *William Kyrle* Esquire, Chief Steward there, *Toby Payne*, Gentleman, Attorney of the Right Honourable Viscount *Scudamore*, and *Philip Rose* Gentleman, Attorney of Sir *Edward Powell*, Knight, and *Thomas Hopkin* Attorney of *William Hoskins* Gentleman, Suitors, and Domesmen of the said Court, and others of his said Majesty's Faithful Subjects then present there between *William Nurse*, and *Sarah his Wife*, and *John Nurse* Son of the said *William and Sarah*, Plaintiffs, and

“ and *Thomas Gwillim*, and *Mabell*
“ his Wife, Deforcents, of one Messu-
“ age, one Barn, one Garden, one Or-
“ chard, sixty Acres of Land, fifteen
“ Acres of Meadow, and two Acres of
“ Pasture, with the Appurtenances in
“ *King's Caple*, within the Jurisdiction
“ of this Court, whereupon a Plea of
“ Covenant had been summoned between
“ them in the same Court, according to
“ the Custom of the Manor or Hundred
“ aforesaid, there used and approved of
“ for so long a Time, that there is no
“ Remembrance of any Man to the con-
“ trary, ” and the Agreement is such (that
is to say) that the said *Thomas* and
Mabell have acknowledged the said Ten-
ments, with the Appurtenances, to be
the Right of the said *William*, as those
which they the said *William*, *Sarah*,
and *John*, have of the Gift of the said
Thomas, and those they have remised,
and quit claimed from them the said *Tho-*
mas and *Mabell*, and the Heirs of the
said *Thomas*, to the said *William*, *Sa-*
rah, and *John*, for, and during the Term
of their Lives, and the longer Liver of
them, yielding therefore yearly to the said
Thomas, and his Heirs, six Pounds of Law-
ful Money of *England*, upon the first
Day of *August*, and the first Day of
February, by equal Portions ; and the said
• *Thomas* and *Mabell* have granted for
themselves,

Precedents of Special Verdicts

themselves, and the Heirs of the said *Thomas*, that they will warrant the said Tenements with the Appurtenances, to the said *William*, *Sarah*, and *John*, for, and during the Term of their Lives, and the longest Liver of either of them, against all Men whatsoever, and for this Acknowledgment, Remission, Quit Claim, Warranty, Fine, and Agreement, they the said *William*, *Sarah*, and *John*, have given to the said *Thomas* and *Mabell*, one hundred forty five Pounds, and ten Shillings of Sterling Money; but the said Jurors, do upon their said Oath further declare, that the said Messuage, Lands, and Tenements mentioned in the said Fine, were not usually Demiseable at the Time of levying the Fine aforesaid, and that the said Annual Rent reserved by the said Fine as aforesaid, was not the antient Rent of the said Tenements: By Virtue of which said Fine, They the said *William Nurse*, and *Sarah* his Wife, and *John Nurse*, entered into the Lands and Tenements aforesaid, and were seised thereof, as the Law requires, and being so seised thereof, he, the said *Thomas Gwillim* the Father, being seised of the Reversion of the Messuage, Lands, and Tenements aforesaid, a certain other Fine produced in Evidence to the said Jurors, was levied in the said Court of

That the Premises at the Time of the Fine, were not usually demiseable, nor was the Rent reserved the antient Rent. That the Conuzees entered.

That T. G. the Father being seised of the Reversion, he and his Wife levied another Fine of the Premises, 2 Jan. 24 Car. II. to T. Mar. rest, and his Heirs.

the Right Honourable the Lady *Elizabeth*,

*Zeth, Countess of Kent, then Lady of
her said Manor or Hundred of Wormeloe,
held at Polston in the Parish of King's
Caple, within the Jurisdiction of that
Court, according to the Custom afore-
said, used and approved of within the said
Manor, during the whole Time aforesaid,
on Friday the second Day of June, in
the twenty fourth Year of the Reign of
our said late Sovereign Lord Charles the
First, late King of England, &c. before
William Gardiner, Gentleman, then
Deputy to Walter Kyrle, Esquire, then
chief Steward there, and Toby Payne,
Gentleman, Attorney of the Right Ho-
nourable John, Viscount Scudamore, John
Kidley, Gentleman, then Attorney to
William Scudamore, Esquire, and Philip
Reese, Gentleman, then Attorney to
Sir Edward Powell, Knight and Baro-
net, then Suitors and Domesmen of the
said Court, and others of his said Ma-
jesty's Subjects then present there, between
one Thomas Marrett, Plaintiff, and the
said Thomas Gwillim and Mabell his
Wife, Defendants of the said Messu-
ages, Lands, and Tenements mentioned
in the said Declaration; by which last
mentioned Fine, the said Thomas Gwil-
lim and Mabell, granted to the said
Thomas Marrett, and his Heirs, the
said Messuages, Lands, and Tenements,
mentioned in the within written Declara-
tion,*

The Fine in
boc Verba.

tion, as in the said Fine it is more fully expressed, the Tenor of which said Fine, follows in these Words, " *Wormlow, s.*

" This is a final Agreement made in the
 " Court of the Right Honourable the
 " Lady *Elizabeth*, Countess of *Kent*, of
 " her Manor or Hundred of *Wormelow*,
 " held at *Polston* in the Parish of *King's*
 " *Caple*, within the Jurisdiction of this
 " Court, on *Friday*, the second Day of
 " *June*, in the twenty fourth Year of
 " the Reign of our Sovereign Lord
 " *Charles*, by the Grace of God, King
 " of *England, Scotland, France, and*
 " *Ireland*, Defender of the Faith, &c.
 " before *William Gardiner*, Gentle-
 " man, Deputy to *Walter Kyrle*, Es-
 " quire, Chief Steward there, and *To-*
 " *by Payne*, Gentleman, Attorney to the
 " Right Honourable *John, Viscount Scu-*
 " *damore, John Kidley*, Gentleman, At-
 " torney to *William Scudamore*, Es-
 " quire, and *Philip Reese*, Gentleman,
 " Attorney to Sir *Edward Powell*,
 " Knight and Baronet, Suitors, and Do-
 " mesmen of the said Court, and others
 " of his said Majesty's Subjects then pre-
 " sent there, between *Thomas Marrett*,
 " Gentleman, Plaintiff, and *John Gwil-*
 " *lim, and Mabell his Wife, Deforci-*
 " *ents, of one Messuage, one Garden, one*
 " *Orchard, sixty Acres of Land, two*
 " *Acres of Meadow, and fifteen Acres*
 " *of*

“ of Pasture, with the Appurtenances in
“ King’s Caple, within the Jurisdiction
“ of this Court, whereupon a Plea of
“ Covenant was summoned between them
“ in the same Court, according to the
“ Court of the Manor or Hundred afore-
“ said, there used and approved of, for
“ so long a Time, as there is no Remem-
“ brance of any Man to the contrary,
“ and the Agreement is such, that the
“ said *Thomas Gwillim*, and *Mabell*
“ have acknowledged the said Tene-
“ ments, with the Appurtenances, to be
“ the Right of the said *Thomas Marrett*,
“ as those which the said *Thomas Mar-*
“ *rett* hath of the Gift of the said *Tho-*
“ *mas Gwillim*, and *Mabell*, and those
“ they have remised and quit claimed
“ from themselves, and their Heirs for
“ ever. And further the said *Thomas*
“ *Gwillim* and *Mabell*, have granted for
“ themselves, and the Heirs of the said
“ *Thomas Gwillim*, that they will
“ warrant the said Tenements, with the
“ Appurtenances, to the said *Thomas*
“ *Marrett* and his Heirs for ever, and
“ for this Acknowledgment, Remission,
“ Quit Claim, Warranty, Fine, and
“ Agreement, the said *Thomas Marrett*,
“ hath given to the said *Thomas Gwil-*
“ *lim*, and *Mabell*, one hundred Pounds
“ Sterling, in Testimony of which Mat-
“ ter, as well the said Deputy Steward,
“ as

Precedents of Special Verdicts

“ as the Suitors and Domesmen aforesaid,
 “ have set their Seals to these Presents,
 “ dated the Day and Year abovemen-
 “ tioned. ” *And the said Jurors do*
upon their said Oath further declare,

That the last
 Fine was levied
 to the Use of
 T. G. the Fa-
 ther, That T.
 G. the Father,
 1 November,
 24 Car. I. by
 an Indenture
 enrolled, &c.
 conveyed, &c.
 the Premises
 to Thomas
 Payne, and his
 Heirs.

That the Fine last mentioned thus levied,
 was so levied to the Use of the said *Tho-*
mas Gwillym the Father, his Heirs, and
 Assigns for ever, by virtue of which said
 Fine, and also by Force of the said Act
 for transferring Uses into Possession, the
 said *Thomas Gwillym* was seized of the
 said Tenements, specified in the within
 written Declaration as the Law requires,
 and being so seized thereof, by a certain
 Indenture produced in Evidence to the
 said Jurors, bearing Date on the first
 Day of *November*, in the twenty fourth
 Year of the Reign of His said late Ma-
 jesty, *Charles the First*, late King of
England, then executed between the said
Thomas Gwillym, the Father, by the
 Name of *Thomas Gwillym of King's*
Caple, in the County of *Hereford*, Gen-
 tleman, of the one Part, and *Thomas*
Payne of King's Caple aforesaid, Yeo-
 man, of the other Part, He the said
Thomas Gwillym, the Father, for the
 Considerations mentioned in the same In-
 denture, enfeoffed, bargained, and sold
 to the said *Thomas Payne*, and his
 Heirs, the said Messuage, Lands, and
 Tenements, mentioned in the said Inden-
 ture,

ture; *And the said Jurors do upon their said Oath further declare*, that the said last mentioned Indenture was enrolled of Record in the County of *Hereford*, among the Records of the same County, according to the Direction of the Statute in such Case made and provided before The Enrollment of the Indenture before Justices of Peace.

Thomas Baskerville, Esquire, then One of the Justices assigned to keep the Peace, in, and for the said County of *Hereford*; and *Miles Hill*, Gentleman, then Clerk of the Peace of the said County, within Six Months then next following after making the said Indenture, (that is to say) on the fifteenth Day of *March*, in the Year of our Lord, according to the Computation of the *English Church*, One thousand six hundred forty eight, by virtue of which said Bargain and Sale, and also by Force of the said Act for transferring Uses into Possession, the said *Thomas Payne* was seised of the said Reversion of the Tenements mentioned in the said Declaration, as of a Fee, and Right, as the Law requires, *And the said Jurors do upon their said Oath further declare*, That the Lands and Tenements aforesaid, mentioned in the Declaration aforesaid, and the said Lands and Tenements in the said last mentioned Fine, are the same, and not different, or separate Lands and Tenements, *And they do further declare*, that by a Release

That *Thomas Gwillym* the Father, 19 November 1649, released all his Right to the said *Thomas Payne*, (being seised, &c.) and to his Heirs.

The Release in
the Verba.

produced in Evidence to the said Jury, bearing Date on the nineteenth Day of November, in the Year of our Lord, One thousand six hundred forty nine, He, the said *Thomas Gwillym*, for the Considerations therein mentioned, gave, granted, remised, released, and quit claimed to the said *Thomas Payne* (being seised of the Reversion of the said Tenements in the Manner aforesaid) and to his Heirs, all the Title, Interest, Term, and Demand whatsoever of the said *Thomas Gwillym*, in the Lands and Tenements mentioned in the said Release, being the Lands and Tenements mentioned in the said Declaration, as in the same Release it is more fully expressed, the Tenor of which Release follows in these Words, *To all Christian People to whom this present Writing shall come, I Thomas Gwillym of King's Caple, in the County of Hereford, Gentleman, Send greeting in the Lord God Everlasting, Whereas I Thomas Gwillym, by my Indenture under my Hand and Seal, bearing Date, the first Day of November, in the four and twentieth Year of the Reign of our Sovereign Lord Charles, late King of England, &c. acknowledged and inrolled before Thomas Baskerville, Esquire, then one of the Justices of the Peace, and Custos Rotulorum of the said County of Hereford, and Miles Hill,*

Hill, Gentleman, then Clerk of the Peace, for the said County of Hereford, for, and in Consideration of the Sum of twenty Pounds, of lawful Money of England therein mentioned, did give, grant, bargain, and sell, unto Thomas Payne, of King's Caple aforesaid, and his Heirs, all that Capital Messuage, or Tenement, wherein one William Nurse then, and yet dwelleth, lying and being in Penalte, within the said Parish of King's Caple, all the Gleab-Land, Meadow, Pasture, and Wood, thereunto belonging, used, and occupied, and then, and yet in the Tenure of the said William Nurse, and one Thomas Payne, To have and to hold the Capital Messuage, or Tenement, and all and singular other the Premises, with the Appurtenances in the said recited Indenture mentioned, unto the said Thomas Payne, his Heirs and Assigns for ever, to the sole only, and proper Use and Beboof of the said Thomas Payne, and of his Heirs, and Assigns for ever. Now know ye, that I the said Thomas Gwillym, for, and in Consideration of a further Sum of fourscore Pounds, of lawful Money of England, to the said Thomas Gwillym, by the said Thomas Payne, well and truly paid, have granted, remised, released, and quit claimed, and by these Presents do grant, remise, release, and

Precedents of Special Verdicts

for ever quit Claim, unto the said Thomas Payne, and his Heirs, All my Estate, Right, Title, Interest, Term, and Demand whatsoever, which I now have, or by any Means beareafter shall, or may have of, in, or to the said Capital Messuage, or Tenement, Lands, Meadows, Leasowes, Woods, and Premises, with the Appurtenances in Penalte, and King's Caple aforesaid, so that neither I the said Thomas Gwillym, nor my Heirs, shall have Claim, or Demand any Estate, Right, Title, or Interest of, in, or to the said Capital Messuage, Lands, and Premises, with the Appurtenances, or any Part thereof, by me formerly granted to the said William Nurse, Sarah his Wife, and John Nurse their Son, for Term of their Lives, but shall from henceforth be utterly and for ever excluded by these Presents. In Witness whereof, I, the said Thomas Gwillym, have hereunto put my Hand and Seal, the nineteenth Day of November, One thousand six hundred and forty one. And the said Jurors do upon their said Oath further declare, That afterwards, namely on the twentieth Day of June, in the Year of our Lord, One thousand six hundred sixty three, the said Thomas Gwillym the Father, died, and that the said Thomas Gwillym, the Younger, being then of the full

That Thomas Gwillym the Father, died 20 January, 1663.

ull Age of twenty one Years, was Son, That the said
 and Heir of the said *Thomas Gwillym*, ^{T. G. the}
 the Father, and that the said *Thomas Gwillym* the Younger,
 had Issue begot-^(within Age)
 ten of his Body, the said *Richard Gwillym* the Son, the Lessor of the Premises,
 and that the said *Thomas Gwillym* the ^{was his Son}
 Father of the said *Richard*, afterwards,
 and before the Time of the Demise in
 the said Declaration, above supposed to
 have been made, died, and that the said
Richard Gwillym, is Son and Heir to ^{and had Issue}
 the said *Thomas Gwillym*, his Father,
 and Nephew and Heir to the said *Mary Andrews*, ^{the Lessor of}
 lawfully issuing from her Bo- ^{the Body of}
 dy, *And the said Jurors do upon their*
said Oath further declare, That the said
Thomas Payne being seised in the man-
 ner aforesaid, of the said Reversion of
 the Tenements specified in the said De-
 clarations, he, the said *Thomas Payne*, ^{That the said}
 afterwards, and before the Time of the *T. Payne, died*
 Demise supposed in the Declaration a- ^{20 September,}
 fore said, (namely) on the twentieth Day ^{1661,} and his
 of *September*, in the Year of our Lord,
 One thousand six hundred sixty one, died ^{Reversion de-}
 being thus seised thereof, after whose ^{scended to}
 Decease, the said Reversion of the same ^{*John Payne,*}
 Tenements descended to one *John Payne*, ^{his Son and}
 as Son and Heir of the said *Thomas Payne*, whereby the said *John Payne*
 became seised of the said Reversion of
 those Tenements, as of a Fee and Right,

Precedents of Special Verdicts

as the Law requires, and being so seized thereof, he, the said *John Payne*, afterwards, and before the Time of the Demise supposed in the said Declaration, (namely) on the twenty eighth Day of *December*, in the Year of our Lord, One thousand six hundred and eighty, died without Issue springing from his Body, being seized of such his Estate, in the manner aforesaid, after whose Decease, the said Reversion of the Tenements aforesaid, descended to the said *Margaret*, Wife of the said *Edward*, to *Mary*, the Wife of the said *Andrew*, and to *Mary Meyrick*, as Co-Heirs of the said *John Payne*, whereby the said *Edward* and *Margaret* his Wife, in Right of the said *Margaret*, and the said *Andrew*, and *Mary* his Wife, in Right of the said *Mary*, and the said *Mary Meyrick*, were seized of the said Reversion of the Tenements aforesaid, as of a Fee and Right, as the Law requires; and that the said *Thomas Payne*, during his Life, and after making the said Indenture of Bargain and Sale, enrolled as aforesaid, and after his Decease, the said *John Payne*, in his Life Time, and after his Decease, the said *Edward*, and *Margaret Andrews*, and *Mary Meyrick*, respectively received, and quietly enjoyed the said Annual Rent of six Pounds, reserved as aforesaid, during the Continuance

That *Thomas Payne*, and his Heirs, received the Annual Rent, &c.

ance of the said Grant, and Demise, made for three Lives, as aforesaid ; And the said Jurors do upon their said Oath, further declare, That the said *Mary Nurse*, ^{That the Survivor of the Three Lessees, died 17 September, 1693.} survived the said *William Nurse*, and *John Nurse*, who died seised of the said Tenements, specified in the said Declaration ; and that she the said *Sarah*, died on the seventeenth Day of *September*, in the Year of our Lord, One thousand six hundred ninety three, seised of the said Tenements, specified in the said Declaration as aforesaid ; and that after the Decease of the said *Sarah*, the said *Edward Bourne*, and *Margaret*, in Right of the said *Margaret*, the said *Andrew*, and *Mary*, in Right of the said *Mary*, and the said *Mary Meyrick*, entered into the said Messuage, Lands, and Tenements, mentioned in the Declaration aforesaid, and were seised thereof, as the Law requires ; and that afterwards, and before the Time of the Demise abovementioned in the said Declaration, the said *Richard Gwillym* entered into the said Messuage, Lands, and Tenements, abovementioned in the within written Declaration, and was seised thereof, as the Law requires, he, the said *Richard*, then and yet being within the Age of twenty one Years. ^{Conclusion.} They further find the Lease Entry, and Ouster, and if, &c. with the General Conclusion.

U 4

Upon

Precedents of Special Verdicts

Upon the Argument of this Case, which was in the King's Bench, upon a Writ of Error, the following Points were unanimously resolved.

First, That a Fine may be levied of Lands in antient Demesne, in the Court of antient Demesne, notwithstanding the Statute of 18 Ed. I. called Modus Le-vandi Fines, which mentions, that Fines shall be levied in the Common Pleas, and not elsewhere, for that Statute only takes away the Validity of Fines levied in Burrough Courts, or other inferior Courts, which was the Mischief intended to be prevented by that Statute, and doth not extend to Courts of antient Demesne: For it would be unreasonable that they should binder the levying Fines in the Common Pleas, (as they might do by a Writ of Disceit) and yet they could not levy Fines in their Courts of antient Demesne.

Secondly, It was resolved, That such Fines levied in antient Demesne, made a Discontinuance, and hath all the Effects of a Fine levied in the Common Pleas, but that it is not a Bar, which is only by the Statute of the 4 of H. 7.

Thirdly, That the Fine found in this Case is good, notwithstanding that the Custom is found to levy Fines founded upon a Writ of Right Close; and the Fine levied, is in an Action of Covenant between

between them, &c. For it is found to be according to the Custom of the Court, and there is not any Inconsistency between a Writ of Right Close, and this Action of Covenant, for the Action of Covenant, is not Personal in that Case, but Real, That the Party perform his Covenant of such and such Lands, and not for Damages, for the Breach of the Covenant.

Fourthly, That the first Fine found, made a Discontinuance only for Lives, and not a Discontinuance in Fee, notwithstanding that the Conuzors in the first Part of the Fine, acknowledged the Right to be to the Conuzees, which was objected, implied a Fee-Simple, and notwithstanding the Warranty in the second Fine.

Fifthly, The Lessor of the Plaintiff is not barr'd by the Statute of 21 Ja. I. of Limitations, altho' that twenty Years were pass'd after the Right of Action, viz. a Formedon accrued; for altho' that he was barr'd of that Action, after twenty Years were pass'd, yet he hath a Title of Entry only, after the Discontinuance, for three Lives determined, and he shall have twenty Years to enter after his Title of Entry accrued to him, which in this Case was by the Determination of the Lease, for three Lives, and that was within twenty Years before the Action brought.

Judg-

Precedents of Judgments, and other Entries in Ejectment.

Judgment in Ejectment for the Plaintiff, after a Verdict.

Therefore it is considered, (or *ad-judg'd*) that the said *Charles*, do recover against the said *W.* his Term yet to come, of, and in the said Tenements, with the Appurtenances, and the said Damages assessed by the said Jury in Form aforesaid; and also eight Pounds, and ten Shillings for his Expences and Costs, awarded to the said *Charles*, with his Assent, by his present Majesty's Court here, by way of Increase, which said Damages, in the Whole, amount to ten Pounds, ten Shillings, and six Pence, and be the said *W.* amerced, &c.

Judgment by Default on a Scire Facias, in Ejectment on a double Demise.

BUT made Default, therefore it is considered, that the said *John Jones*, have his Possession of the said Term yet to come, of, and in the several Tenements aforesaid, with their Appurtenances, and also his Execution against the said *A.* for his Damages, according to the Force, Form, and Effect of

of the said Recovery, by the Default of
the said *Arthur, &c.*

*Judgment in Ejectment by Default, by
Nil dicit upon an Original.*

AND the said (Defendant) by *A. B.* his Attorney, comes and de-
fends the Force, and Injury, &c. and hereupon the said (Plaintiff) prays that
the said (Defendant) may answer to the
said Declaration ; and the said (Defen-
dant) says nothing thereto in Bar, or to
preclude the said Plaintiff from his Action,
but makes Default, whereby the said Plain-
tiff remains against the said (Defendant)
undefended ; wherefore it is considered,
that the said (Plaintiff) do recover against
the said (Defendant) his Possession of the
said Term yet to come, of, and in the said
Tenements, with their Appurtenances,
and his Damages occasioned by the Tres-
pans, and Ejectment aforesaid : But be-
cause it is unknown, what Damages the
(Plaintiff) hath sustained, by reason of
the Trespans, and Ejectment aforesaid,
the Sheriff is commanded, that by the
Oath of twelve honest, and lawful Men
of his Bailiwick, he diligently inquire,
what Damages the said (Plaintiff) hath
sustained, as well by Reason of the said
Trespans, and Ejectment, as for his Costs
and Expences, laid out by him, about
his

Judgments.

his Suit in that Behalf ; And that he cause the Inquisition which he shall take, &c. to be made apparent to our Sovereign Lord the King at *Westminster*, in three Weeks from the Day of St. *Michael*, under the Seal, &c. and the Seals, &c. the same Day is given to the said (Plaintiff) ; and thereupon the said (Plaintiff) prays his Majesty's Writ of Possession, &c. as hereafter.

Judgment in Ejectment by Original, where the Attorney says he is not instructed to make any Defence, which is properly called, Non sum Informatus.

AND the said *C.* by *B. T.* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where, and when the Court will consider thereof ; and hereupon the said *A.* prays that the said *C.* may make Answer to his said Declaration, upon which the said *E.* says, that he is not instructed by his Client (the said *C.*) to give any Answer to the above Complaint of the said *A.* nor says he any thing in Bar, or to preclude the said *A.* from his said Action whereby the said *A.* remains against the said *C.* undefended therein ; for which reason it is considered, that the said *A.* do

do recover against the said *C.* his Possession of the said Term yet to come of, and in the said Tenements, with the Appurtenances, and his Damages occasioned by the said Trespass and Ejectment ; but because it is unknown what Damages the said *A.* hath sustained by reason of the said Trespass and Ejectment ; the Sheriff is commanded, that he diligently enquire by the Oaths of twelve honest, and lawful Men of his Bailiwick, what Damages the said *A.* hath sustained, as well by reason of the said Trespass and Ejectment, as for his Expences and Costs, laid out by him about his Suit in that Behalf ; and that the Sheriff cause the Inquisition, which he shall take thereon, to be before our Sovereign Lord the King (if by Original) from the Day of St. *Michael* in three Weeks, wherever he shall then be in *England* ; (if by Bill) on *Monday* next after three Weeks of Saint *Michael*, under his Seal, and the Seals of those by whose Oaths he shall take such Inquisition ; the same Day is given to the said *A.* to be here, before our Sovereign Lord the King, and thereupon the said *A.* prays a Writ of our said Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause him to have the Possession of his said Term, of, and in the said Tenements, with the Appurtenances, yet to come,

The Difference between an Inquisition on an Original, and when the Proceedings are by Bill.

come, and it is granted to him returnable here at the Time aforesaid, &c.

*A Judgment by Non Sum Informatus,
with a Remittitur Damna.*

AND the said *Matthew Dymock*, by *John Lilly* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where, and when the Court will consider thereof; and hereupon the said *James Hicks*, prays that the said *Matthew* may make Answer to his said Declaration; upon which the said Attorney, for the said *Matthew* saith, he is not instructed by the said *Matthew*, his Client, to give any Answer to the said Complaint of the said *James*, nor says any thing in Bar or to preclude the the said *James* from his said Action, whereby the said *James* remains against the said *Matthew* undefended therein; therefore it is considered, that the said *James* do recover his said Term of and in the said Tenements, with the Appurtenances, against the said *Matthew*, and his Damages occasioned by the said Trespass and Ejectment, to be awarded to him, &c. and the said *James* of his own Accord, remits and releases to the said *Matthew*, all such Damages so awarded to him; therefore the said *Matthew* is acquitted

acquitted of all such Damages, and the said *James* prays a Writ of our said Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause him to have the Possession of his said Term, (yet unexpired) of, and in the said Tenements, with the Appurtenances, and it is granted to him, returnable before our said Sovereign Lord the King, (if by Bill) on *Monday* next after three Weeks of *St. Michael*; (if by Original) in three Weeks from the Day of *St. Michael*, wheresoever he shall then be in *England*: The same Day is given to the said *James* to be here, &c.

*Judgment for the Plaintiff for Part,
and the Plaintiff to be amerced for
the Residue.*

Afterwards, &c. Therefore it is adjudged, that the said Plaintiff do recover against the said Defendant, his Term aforesaid, of, and in the two hundred and sixty Acres of Wood, with the Appurtenances; (forasmuch as the said Defendant is, by the Jurors aforesaid, above found to be guilty of the Trespass and Ejectment aforesaid) yet unexpired, and his Damages aforesaid, assessed by the said Jurors, to forty one Shillings, &c. and also six Shillings awarded by this Court, to the said (Plaintiff) at his Request,

quest, &c. which said Damages in the whole, do amount to eight Pounds twelve Shillings; and be the said (Defendant) taken, &c. and be the said (Plaintiff) amerced for his false Complaint against the said Defendant, for the Residue of the Trespass and Ejection aforesaid, whereof the said Defendant is above acquitted by the Jurors aforesaid, is, and the said Defendant may go hence, thereof for ever dismissed, &c. And hereupon the said (Plaintiff) prayeth a Writ of our Sovereign Lord the King, to be directed to the Sheriff of the County, to cause him to have his Possession of his Term aforesaid yet unexpired, of, and in the said two hundred and sixty Acres of Wood, with the Appurtenances and it is granted to him returnable here in eight Days of St. Hillary, &c.

When the Defendant relinquisheth his Plea and confesseth the Action, and a Writ of Inquiry is awarded for the Plaintiff.

AT which Day came here the Parties aforesaid, &c. (as in a Common Action) by a Special Warrant appointed for that Purpose; and hereupon the Defendant doth relinquish his Averment aforesaid, &c. (as in others) nor but that he is guilty of the Trespass and Ejection

Ejectment aforesaid, as the said Plaintiff hath above complained against him ; therefore it is adjudged, that the said Plaintiff do recover against the said Defendant, his Term aforesaid, of, and in the Tenements aforesaid, with the Appurtenances yet unexpired ; and his Damages occasioned by the Trespass and Ejectment aforesaid, and because it is unknown what Damages, &c. under the Seal, &c. and the Seals, &c.

Judgment that the Plaintiff recover the Lands, who remitteth the Damages, and prayeth Judgment for the Costs with Increase, and as to the Residue of the Lands, whereof the Defendants are found not Guilty, the Plaintiff is amerced.

c. B.
After the Process being continued between the Parties aforesaid, in the said Action, the Jurors were therefore respited between them here, until at this Day, (that is to say) in fifteen Days from the Feast of *Easter*, in the sixth Year of the Reign of our Sovereign Lord the King ; unless, &c. And now, &c. Afterwards, &c. And hereupon the said P. here in Court, freely remits to the said R. R. and A. the said six Pence for the Damages aforesaid, assessed by the said Jurors, in the manner aforesaid.

X

And

Judgments.

And also the Increase of the same to be awarded to him, and therefore it is adjudged, that the said *P.* do recover against the said *R. R.* and *A.* his Term aforesaid, of, and in the Tenements aforesaid, with the Appurtenances yet unexpired, (forasmuch as by the Jurors aforesaid, the said *R. R.* and *A.* are above found to be guilty of the Trespass and Ejectment aforesaid) and also it is adjudged, that the said *P.* do recover against the said *R. R.* and *A.* the said fifty three Shillings, and four Pence, assed by the said Jurors in the manner aforesaid ; and also seven Pounds, six Shillings, and eight Pence, awarded by this Court, to the said *P.* at his Request, &c. which said Costs and Damages in the whole, do amount to ten Pounds. And be the said *R. R.* and *A.* taken, &c. And be the said *P.* amerced for his false Complaint against the said *R. R.* and *A.* of the Residue of the Trespass and Ejectment aforesaid, whereof the said *R. R.* and *A.* respectively are acquitted by the said Jurors. And the said *R. R.* and *A.* of the Residue of the Trespass and Ejectment aforesaid, and of the said six Pence for the Damages aforesaid, assed by the said Jurors in the manner aforesaid, may go hence thereof for ever dismissed, &c. And hereupon, &c.

Judgment

Judgment for the Plaintiff, where the Term expired before the Judgment given.

AT which Day the Jurors, &c. afterwards, &c. And because the Justices here will advise themselves (and so continue it till P. 6, Geor. II.) At which Day came here, as well the said R. as the said L. by their Attornies aforesaid, and hereupon the Premises being seen, and by the Justices here fully understood, for that it sufficiently appeareth here to this Court, that the said Term of three Years is fully past. It is considered (or adjudged) that the said R. do recover against the said L. his Damages aforesaid, assessed by the said Jurors to forty Shillings, &c. and also, &c. which said Damages in the whole, do amount to seven Pounds, and be the said L. taken, &c.

One of the Defendants found not guilty as to Part, and the others not guilty as to all.

BE the said L. taken, &c. and be the said Plaintiff amerced for his false Complaint against the said T. for the Residue of the Trespass and Ejectment aforesaid, and against C. and R. of the whole Trespass and Ejectment aforesaid

Judgments

said, whereof the said *T. C.* and *R.* are by the said Jurors wholly acquitted, and the said *T. C.* and *R.* may go hence thereof for ever dismiss'd, &c and hereupon, &c.

Judgment for the Plaintiff after a Verdict at the Bar, and a Writ of Possession awarded, and the Return thereof.

C. B.

AT which Day the Jury aforesaid being respited between the Parties aforesaid, in the said Action, &c and now here at this Day cometh as well the said (Plaintiff) as the said (Defendant) by their Attornies aforesaid, and the Jurors impannelled being called, likewise came, who being elected, tried, and sworn to declare the Truth of the Premises, as to the Trespass and Ejectment aforesaid, in ten Acres of Land, and eighty four Acres of Wood in *W.* aforesaid, Parcel of the Tenements aforesaid, above supposed to be done, They declare upon their Oaths, that the said (Defendants) are thereof guilty, as the said (Plaintiff) hath above thereof complained against them, and they assess the Damages of him the said (Plaintiff) occasion'd by the Trespass and Ejectment, besides his Costs to ten Shillings; and for those Costs and Charges to twenty Marks, and as to the Residue of

of the Trespass and Ejectment aforesaid, in the Residue of the Tenements aforesaid, with the Appurtenances above supposed to be done, the Jurors aforesaid, do further declare upon their said Oath, That the Defendant is in no wise guilty thereof, as the said (Defendants) have above alledged ; therefore it is adjudged, that the said (Plaintiff) do recover against the said (Defendants) her Term aforesaid yet to come, of, and in the said ten Acres of Land and eighty four Acres of Wood, with the Appurtenances in *W.* aforesaid, (wherein the said Defendants are by the Jurors aforesaid above found to be guilty of the Trespass and Ejectment aforesaid) and his Damages aforesaid, assessed by the Jurors aforesaid to three Pounds, six Shillings, and eight Pence, in the manner aforesaid ; and also twenty one Pounds, three Shillings, and four Pence, at his Request, &c. which said Damages in the whole do amount to — and be the said Defendants taken, &c. And he, the said Plaintiff, amerced for his false Plaintiff against the said Defendants, for the Residue of the Trespass and Ejectment aforesaid, whereof the said Defendants are above acquitted by the said Jurors. And the said (Defendants) may go therefrom for ever dismissed, &c. And hereupon the (Plaintiff) prayeth a Writ, &c. And it is granted to him re-

urnable here on the Morrow of the *Holy Trinity*, &c. at which Day the said Plaintiff comes here by his Attorney aforesaid, and the Sheriff, (that is to say) *M. W. Knight* and *Baronet*, now returneth, that he by Virtue of the Writ aforesaid to him directed, did, on the eleventh Day of *June* last past, cause the said Plaintiff to have his Possession of his Term aforesaid, of, and in the Tene-ments aforesaid, with the Appurtenances, yet unexpired, as by the Writ aforesaid he was commanded &c.

A Verdict against several Defendants of several Parcels of Land, and several Damages found, and Costs against all.

AT which Day the Jurors, &c. af-terwards, &c. Therefore it is con-sidered (or adjudged) that the said (Plain-tiff) do recover against the said *T. B.* his Term aforesaid unexpired of, and in one Messuage, eight Acres of Meadow, seven Acres of Pasture, with the Appurtenan-ces (wherein the said Defendants are by the said Jurors above found to be guilty of the Trespass and Ejectment aforesaid) and his Damages occasioned by that Tres-pass and Ejectment, done to the said (Plaintiff) by the said *T.* in the man-ner aforesaid, besides his Costs and Charges

Charges aforesaid, assessed by the Jurors aforesaid, in the manner aforesaid, to two Pence. And against the said *I.* his Term aforesaid, of, and in the said one Cottage, with the Appurtenances (wherein the said *I.* is by the said Jurors above found to be guilty of the Trespass and Ejectment) yet unexpired, and his Damages occasioned by that Trespass and Ejectment done to the said Plaintiff, by the said *I.* in the manner aforesaid, besides his Costs and Charges aforesaid, assessed by the Jurors aforesaid to two Pence, in the manner aforesaid (*and so against the rest of the Defendants, where there are several Ejectors*) And it is also adjudged that the said (Plaintiff) do recover against the said *T.* and *I.* his Damages, Costs and Charges by him, &c. likewise assessed to the said forty Shillings, in the manner aforesaid ; and also eight Pounds adjudged to the said (Plaintiff) at his Request for his Costs, &c. which said Damages, Costs, and Charges, besides the several Damages aforesaid, in the whole do amount to ten Pounds. And that the said *T.* and *I.* be taken, &c. And be the said Plaintiff amerced for his false Plaintiff against the said *T.* and *I.* of the Residue of the Trespass and Ejectment aforesaid, whereof the said *T.* &c. are by the Jurors aforesaid above acquitted, and the said *T.* *I.*, &c. may depart,

Executions

therefrom for ever dismissed. And here-
upon the said Plaintiff prayeth a Writ
of our Sovereign Lord the King, to be
directed to the Sheriff, &c.

Executions and Returns thereof.

*A Writ of Habere Facias Possessionem ;
or a Writ to cause the Plaintiff to
have his Possession of the Tenements
in Question, with a Fieri Facias for
the Costs.*

x. B.

GEO R G E the Second, by the
Grace of God of Great Bri-
tain, France, and Ireland, King, De-
fender of the Faith, &c. to the Sheriff
of Oxford, Greeting: Whereas Richard
J. lately in our Court before us at West-
minster, by our Writ, (if by Original)
(if by Bill) then by a Bill without our
Writ, and by the Judgment of the same
Court, recovered against T. B. late of
London, his Term (yet unexpired) of,
and in six Messuages, two hundred Acres
of Land, forty Acres of Meadow, one
hundred Acres of Pasture, and two
hundred Acres of Wood Land, with the
Appurtenances, in S. and in the Parish
of Stanton Harcourt, in your County ;
and also of, and in the Rectory of
Stanton Harcourt, with the Appur-
tenances, in your County, which one
W.

W. M., on the seventh Day of *April*, in the second Year of our Reign, demised to the said *Richard* for a Term of Years which is not yet expired, (that is to say) from the first Day of the same Month of *April*, to the full End and Term of ten Years then next following, fully to be compleat and ended ; by Virtue of which said Demise, the said *Richard* entered into the said Rectory and Tenements, with the Appurtenances, and was thereof possessed until the said *Thomas* afterwards, (that is to say) on the same seventh Day of *April*, in the said second Year of our Reign, with Force and Arms entered into the said Rectory and Tenements, with the Appurtenances, in, and upon the Possession of the said *Richard*, thereof, and ejected, drove out, and removed the said *Richard* from his said Farm, for the said Term then and yet unexpired, and did, and still doth withhold the Possession of the same from the said *Richard*, whereof the said *Thomas* is convicted, as appears to us of Record ; and forasmuch as it is adjudg'd in our same Court before us, that the said *Richard* have an Execution upon his said Judgment against the said *Thomas*, according to the Force, Form, and Effect of his said Recovery ; therefore we command you, that without Delay you cause the said *Richard*, to have his Possession of

Executions

of his said Term (yet unexpired) of and in the said Tenements, with the Appurtenances, and in what Manner you shall execute this Precept, do you make appear to us, if by Original, in three Weeks from the Day of Saint *Martin*, wherever we shall then be in *England*: We likewise command you, that you cause to be made ten Pounds and six Pence of the Goods and Chattels of the said *T.* in your Bailiwick, which were awarded to the said *R.* in our same Court for his Damages which he sustained by Reason of the said Trespass and Ejectment; and have you those Monies before us at the same Time, wherever we shall then be in *England*, to render to the said *R.* for his Damages aforesaid, whereof the said *T.* is convicted, you returning to us this our Writ. Witness *Robert Lord Raymond*, the twenty third Day of *October*, in the sixth Year of our Reign.

Continuances upon an Habere facias Possessionem.

Therefore the Sheriff is commanded, that without Delay he cause the said *T.* to have his Possession of his said Term of, and in the said Messuage or Tenement, with the Appurtenances. *And as well, &c.* to our said Sovereign Lord the King at *Westminster*, he cause to be (such

(such a Day, the Day of the Return) but because the Court of our said Sovereign Lord the King, know not what Damages the said (Plaintiff) hath sustained, by Reason of the Premises, therefore the said Sheriff is commanded, that by the Oath of twelve Honest and Lawful Men of his Bailiwick, he diligently enquire what Damages the said Plaintiff hath sustained as well by Reason of the Premises, as for his Expences and Costs by him laid out about his Suit in that Behalf; and the Inquiry which, &c. to our said Sovereign Lord the King (the Day of the Return) under the Seal, &c. and the Seals, &c. he return together with the Writ of our said Sovereign Lord the King, to him directed. The same Day is given to the said Plaintiff there, &c. At which Day, &c. came the said Plaintiff by his Attorney aforesaid, and the Sheriff did not return the Writ thereof.

Tarde return'd upon the Writ of Possession, and the Writ of Inquiry executed, and another Writ of Possession awarded.

c. 51
AT which Day comes here the said *L.* by his Attorney aforesaid, and the Sheriff (that is to say) *R. S. Knight*, now returns, that as to the aforesaid Writ to cause the said *L.* to have

have Possession, &c. the same Writ was delivered so late to the said (Sheriff) that for the shortness of the Time, he could not proceed to the Execution thereof ; and as to the said Writ of Inquiry of Damages, &c. the said Sheriff doth also return here a certain Inquisition taken at E. in the County aforesaid, on the eleventh Day of November last past, by the Oath of Twelve, &c. whereby it is found that the said L. hath sustained Damages, by occasion of the Trespass and Ejectment aforesaid, besides his Costs, &c. to forty Shillings, and for those Costs, &c. to six Pence. Therefore it is adjudged that the said L. do recover against the said I. his Damages aforesaid to forty Shillings, found by the said Inquisition in the manner aforesaid, and also six Pounds, nineteen Shillings and six Pence, adjudged to the said L. at his Request, &c. which Damages in the whole, amount to eight Pounds. And be the said I. taken, &c. and hereupon the said L. as before, prays the Writ of our Sovereign Lord the King, to be directed to the Sheriff of the County aforesaid, to cause the said L. to have Possession, &c.

As

As to the Writ of Possession, the Sheriff returneth that nothing was done thereupon, and as to the Writ of Inquiry for Damages, the same executed, and another Writ of Possession awarded.

C. B.

A T which Day comes here the said *A. T. P.* by his Attorney aforesaid. And as to the said Writ, to cause the said *T.* to have Possession, &c. the Sheriff did nothing thereupon, nor return'd the Writ. Therefore as before, let another Writ be thereof made, directed to him in the manner aforesaid, &c. returnable here on the Octaves of Saint *Hillary*, &c. And as to the aforesaid Writ to inquire of the Damages, &c. the Sheriff (that is to say *A. B.*) doth now return here a certain Inquisition (as in others) and for those Costs and Charges to six Shillings ; and because the Justices will advise themselves of, and upon the Premises, until the Octaves of Saint *Hillary*, before they give their Judgment, &c. At which Day here cometh the said *T.* by his Attorney aforesaid, and hereupon the Premises being seen, and by the said Justices here fully understood. It is adjudg'd, &c. (as in the former) and as to the said Writ to cause the said *T.* to have Possession, &c. The Sheriff on the said Octaves of Saint *Hillary* had done nothing

Exemptions

nothing thereupon, nor return'd his Writ, therefore (as before,) let another Writ thereof be made in the manner aforesaid, returnable here, &c.

The Sheriff returneth that he bath deliver'd Possession, and an Inquisition for the Damages, and the Court will advise, before they pronounce Judgment for the Damages.

AT which Day here cometh the said (Plaintiff) by his Attorney aforesaid, and as to the Writ to cause the said (Plaintiff) to have Possession, &c. the Sheriff (that is to say) G. S. Esquire, now returns that he by Virtue of the Writ aforesaid to him directed, did, on the twenty first Day of *November* last past, cause the said (Plaintiff) to have his Possession of his Term aforesaid yet unexpired, of, and in the Tenements aforesaid, with the Appurtenances, according to the Purport of the Writ aforesaid ; and as to the said Writ to inquire of the Damages, &c. the said Sheriff doth also return here a certain Inquisition (as in others until) for those Costs and Charges at four Pence ; and because the Justices here will advise of, and upon the Premises as to that particular whereof, the said Writ of Inquiry of Damages did issue before they pronounce their

their Judgment thereupon, a Day is given to the said (Plaintiff) as in others,) &c.

The Sheriff returneth that Possession was delivered by his Predecessor, and a Tarde as to the Writ of Inquiry.

AT which Day here cometh the said *W.* by his Attorney aforesaid, and the Sheriff (to wit) *W. G.*, Esquire, now returns here, that *W. B.* Esquire, late Sheriff of the County aforesaid, Predecessor of the said now Sheriff, as to the said Writ to cause the said *W.* to have Possession, &c. Did by Virtue of the said Writ to him directed, on the eighth Day of *March* last past, cause the said *W. H.* to have his Possession of, and in the Tenements and Passage aforesaid, with the Appurtenances yet unexpired, and as to the Writ of Inquiry of Damages, &c. that Writ was so late delivered to him, that for the shortness of Time, he could not execute the same, which said Writ, was by the said late Sheriff (on his going out of his Office, delivered to the said now Sheriff, together with the Return of the same executed) as aforesaid, &c. therefore it is adjudged that the said Plaintiff do recover against the said *T. R.* his Term aforesaid, of, and in one Messuage,

Executions

age, eight Acres of Meadow, seven Actes of Pasture, with the Appurtenances yet unexpired, wherein the said *T. R.* by the Jurors aforesaid are above found to be guilty of the Trespass and Ejectment aforesaid, and his Damages occasion'd by the Trespass and Ejectment done to the said (Plaintiff) by the said *T.* in the manner aforesaid, besides his Costs and Charges aforesaid, assesse'd by the Jurors aforesaid, in the manner aforesaid, to two Pence, and against the said *I.* his Term aforesaid, yet unexpired, of, and in the said one Cottage, with the Appurtenances, wherein the said *I.* is by the Jurors aforesaid above found to be guilty of the Trespass and Ejectment aforesaid, and his Damages occasion'd by the said Trespass and Ejectment done to the said (Plaintiff) by him the said *I.* in the manner aforesaid, besides his Costs and Charges aforesaid, assesse'd by the Jurors aforesaid to two Pence in the manner aforesaid. (*And so against the Rest of the Defendants, where there are several Ejectors*) And it is also adjudg'd that the said (Plaintiff) do recover against the said *T.* and *I.* his Damages for his Costs and Charges by him likewise assesse'd, &c. to the said forty Shillings in the manner aforesaid, and also eight Pounds adjudg'd by this Court to the said (Plaintiff) at his Request, for his Costs by way of Increase, Which said Damages,

Damages, Costs, and Charges, besides the several Damages aforesaid, in the whole, do amount to ten Pounds; and be the said *T.* and *I.* taken, &c. and be the said Plaintiff amerited for his false Plaintiff against the said *T.* and *I.* for the Residue of the Trespals and Ejectment aforesaid, whereof the said *T.* *I.* are by the Jurors aforesaid above acquitted, and the said *T.* and *I.* may go thereof dismiss'd the Court; and hereupon the said Plaintiff prayeth the Writ of our said Sovereign Lord the King, to be directed to the Sheriff, &c.

A Writ of Possession upon a Judgment in Ejectment in the Common Pleas, removed into the Court of King's Bench by a Writ of Error, and there the Judgment affirmed.

G E O R G E the Second, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c. to the Sheriff of Middlesex, Greeting: Whereas *Richard Williamson* hath lately in our Court, before Sir *George Treby*, Knight, and his Brethren our Justices of our Court of Common Pleas, by our Writ, and by the Judgment of the same Court, recovered against *William Norton*, late of London, Yeoman, his Term yet unexpired, of,

Executions

and in eight Messuages, with the Appurtenances, in the Parishes of Saint *Martin in the Feilds*, and Saint *Clements Danes*, in your County, which *Christopher Cratford*, Gentleman, on the first Day of *May*, in the third Year of our Reign, demised to the said *Richard*, to have and to hold, to him and his Assigns, from the twenty fifth Day of *December*, then last past, to the full End and Term of seven Years, from thence next ensuing, fully to be compleat and ended. And whereupon the said *William*, afterwards, that is to say, on the twenty first Day of *January*, in the third Year aforesaid, with Force and Arms, entered into the Tenements aforesaid, with the Appurtenances, and expelled, and removed, the said *R.* from his Possession thereof, and ejected him from his said Farm therein, whereof the said *William* is convicted, as by the Inspection of the said Record, and Proceedings thereof, which we lately caused to be brought into our Court before us, by Virtue of our Writ for correcting Errors, prosecuted by the said *William*, of, and upon the said Premises, now remaining in our Court before us, it appeareth to us on Record, whereupon the said Judgment, is before us affirmed, as it likewise appeareth to us on Record. And therefore we command you, that without Delay, you cause the said *Richard*

thard to have his Possession of his Term aforesaid, yet unexpired, of, and in the Tenements aforesaid, and in what manner you shall execute this our Writ, do you make appear to us on the Octaves of the Purification of the Blessed Virgin Mary, wheresoever we shall then be in England, returning to us this our Writ. Witness Robert Lord Raymond, at Westminster, on the twentieth eighth Day of November, in the fifth Year of our Reign.

A Writ of Possession upon a Judgment by Bill, in the Court of King's Bench with a Causal for the Damages.

To the Sheriff of Suffolk, Greeting: Whereas A. F. Esquire, lately in our Court before us, by a Bill without our Writ, and by the Judgment of the same Court recovered against R. H. Gentleman, his Term yet unexpired, of, and in a Messuage, or Tenement, called B. with the Appurtenances in S. in your County, and also two hundred Acres of Land, with the Appurtenances in S. aforesaid, which I. T. and W. P. on the sixth Day of September, in the fourth Year of our Reign, demised to the said A. for a Term of Years, which is not yet past, that is to say, from the Feast of Saint Michael the Archangel, in the

Executions, &c.

said fourth Year of our Reign, to the full End, and Term of five Years, from thence next ensuing, fully to be compleat, and ended: He the said *R.* afterwards, (*that is to say*) on the twenty eighth Day of *October*, in the fifth Year of our Reign, entered with Force and Arms, into the Messuage, and Tenements aforesaid, with the Appurtenances, and expelled, and ejected the said *A.* therefrom; therefore *we command* you, that without Delay, you cause the said *A.* to have his Possession, yet unexpired, of, and in the Messuage, or Tenement above specified; and in what manner you shall execute this our Writ, do you make appear to us at *Westminster*, on *Wednesday next after the Morrow of Saint Martin*. We likewise *command* you, that you take the said *R. H.* if he be found in your Bailiwick, and safely keep him, so that you have his Body before us, at *Westminster*, at the Day aforesaid, to make Satisfaction to the said *A.* for five Pounds, ten Shillings, for his Damages which he has sustained, as well by Reason of the Trespass, and Ejection aforesaid, as for his Expences laid out by him, about his Suit in this Cause, whereof the said *R.* is convicted, as it appears to us on Record, and have you there this Writ. *Witness, &c.*

Proceedings

Proceedings in Error, in Actions of
Ejectment. Ventriss.

*An Assignment of Errors in the King's
Bench, in a Judgment in Ejectment,
in the Common Pleas.*

Afterwards, that is to say, on *Wednesday* next after five Weeks, from the Feast Day of *Easter*, this same Term, the said *James Chapman Fuller*, by *Joseph Sherwood*, his Attorney, appears before our Sovereign Lord the King, at *Westminster*, and pleads that in the Record, and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is *manifest Error* in this Respect, (*that is to say*) That it appears by the Record aforesaid, that the said Judgment given in the manner aforesaid, was given for the said *R. H.* against the said *I. C. F.* whereas by the Law of this Kingdom of *Great Britain*, the Judgment ought to have been given for the said *I. C. F.* against the said *R.* and therefore it is manifestly erroneous in this Respect, and the said *I. C. F.* prays a Writ of our Sovereign Lord the King, to summon the said *R.* to be before our said Sovereign Lord the King, to hear the Record and Proceedings aforesaid, and it is granted to him,

&c. By which the Sheriff is commanded that by honest, &c. he make it known to the said *Robert*, that he be before our said Sovereign Lord the King, *on the Morrow of the Holy Trinity, wheresoever, &c.* to hear the Record, and Proceedings aforesaid. And further, &c. the same Day is given to the said *I. C. F.*, &c. at which Day the said *I. C. F.* by his Attorney aforesaid, appears before our Sovereign Lord the King, &c. and the Sheriff returned not the Writ thereupon. And the said *R.* at the same Day, by *Nathan Hickman*, his Attorney, likewise comes here into this Court, *Gratis*, whereupon the said *I. C. F.* pleads, that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error, alledging the Error aforesaid, by him before alledged in the manner aforesaid, and prays that the Judgment aforesaid for that, and other Errors in the Record, and Proceedings aforesaid, may be reversed, annulled, and rendered altogether ineffectual, and that he may be restored to all Things which he hath been deprived of, by reason of the Judgment aforesaid; and that the said *Robert* may join to the Errors aforesaid; and that this Court of our said Sovereign Lord the King, may now here proceed to an Examination, as well of the Record, and Proceedings

Proceedings aforesaid, as of the Matters above assigned for Error, as aforesaid ; And thereupon the said *Robert* doth aver, that neither in the Record and Proceedings aforesaid, or in giving the Judgment aforesaid, is there any Error whatsoever, and He likewise prays, that the Court of our said Sovereign Lord the King, may now here proceed to an Examination, as well of the Record and Proceedings aforesaid, as also of the Matters aforesaid; above assigned for Error, as aforesaid, and that the said Judgment may be in all Things affirmed, &c.

The Entry of an Assignment of Errors in the Exchequer Chamber, and of the Judgment thereon; as also of the Remission of the Record back again into the Court of King's Bench.

Afterwards, that is to say, on Saturday the fifteenth Day of January, in the nineteenth Year of the Reign of our Sovereign Lord the King, that now is, the Transcript of the Record, and Proceedings aforesaid, between the said Parties, together with all Things touching the same, by Means of a Writ of our Sovereign Lord the King, for correcting Errors in the Premises, sued out by the said *Francis Gerrard*, were transmitted to the Justices of the Common

Proceedings in Error.

Bench of our said Sovereign Lord the King, and the Barons of the Exchequer, of our said Sovereign Lord the King, into the Exchequer Chamber aforesaid, according to the Form of the Statute, made in the Parliament of our late Sovereign Lady *Elizabeth*, late Queen of *England*, at *Westminster*, on the twenty third Day of *November*, in the twenty seventh Year of her Reign, from the said Court of our said Sovereign Lord the King, before the King himself. And the said *Francis*, in the same Exchequer Chamber assigned, divers Matters in the Record, and Proceedings aforesaid, for reversing, and annulling the said Judgment : To which the said *Gideon* appearing in the same Court, pleaded that there is no Error whatsoever, either in the Record, and Proceedings aforesaid, or in giving the Judgment aforesaid. And afterwards, that is to say, on *Saturday*, the sixth Day of *February*, in the twenty first Year of the Reign of our Sovereign Lord the King, that now is, as well the said *Gideon Cook*, as also the said *Francis Gerrard*, by their Attorneys aforesaid, came before the said Justices of the Common Bench, of our said Sovereign Lord the King, and the Barons of the Exchequer, of our said Sovereign Lord the King, in the said Court of the Exchequer Chamber aforesaid.

said. Whereupon all and singular the Premises, being viewed diligently, examined and fully understood by the Court of our said Sovereign Lord the King, in the said Exchequer Chamber; on mature Deliberation had thereon, *it was adjudged*, that the Judgment aforesaid, is in no wise vicious, or defective, and that there is no Error in the Record. Therefore it was *adjudged*, that the said Judgment be in all Things affirmed, and remain in all its full Force and Effect, the said Cause above assigned for Error to the contrary in any wise notwithstanding. And then, and there it was further *adjudged*, that the said *Gideon Cook*, recover against the said *Francis Gerard*, — Pounds, awarded by the Court of our said Sovereign Lord the King, in the Court of the Exchequer Chamber, as aforesaid, to the said *Gideon* with his Consent, according to the Form of the Statute in such Case, made and provided, for his Damages and Costs, which he sustained by reason of delaying the Execution of the Judgment aforesaid, by Means of suing out, and prosecuting the said Writ of Error. And thereupon the Record aforesaid, and also the Proceedings in the Premises, had thereupon before the Justices, and Barons aforesaid, were remitted before our said Sovereign Lord the King, wheresoever, &c. by

the

the Justices and Barons aforesaid, according to the Form of the Statute, &c. and they now remain here in the said Court of our said Sovereign Lord the King.

Coote v. Lynch.

Mich. 8. W. 3. Roll 200.

A Writ of Error upon a Bill of Exceptions, upon a Verdict, and Judgment in the Common Pleas in Ireland, removed into the King's Bench there, and affirmed, and from thence removed to the Kings Bench in England, and there affirmed and afterwards removed into the House of Lords.

“ **W**ILLIAM the Third, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith; to our trusty and well-beloved Counsellor, Sir Richard Pyne, Knight, our Chief Justice, assign'd to hold Pleas before us, in our Kingdom of Ireland, Greeting: Because in a Record, and Proceedings, and also in giving Judgment of a Plaintiff, which was levied in our Court of Common Pleas, in our Kingdom of Ireland, before you, and your Brethren, then our Justices of the same Court, by our Writ between John Lynch, Gentleman, and Richard Coote, Esquire, of a Plea of Trespass, and Ejectment, done to the said John, by him the said Richard. (Which Record, and Proceedings, with the Cause of the intervening Error, we have caused to be brought before us in our Kingdom of Ireland. And the Judgment thereupon is affirmed before us in our Kingdom of Ireland, and now remaining before us in our said Kingdom of

" of Ireland,) manifest Error intervened to
 " the great Damage of the said *Richard*,
 " as we have received Information from his
 " Complaint. *We willing* the Error, if any,
 " be in a due Manner, corrected, and full,
 " and speedy Justice done to the said Par-
 " ties, in this Particular. *We command you*,
 " That if Judgment be thereupon given,
 " and affirmed, then do you certify under
 " your Seal, the Record, and Proceedings
 " aforesaid, *distinctly*, and plainly, toge-
 " ther with all Things relating thereto,
 " and this Writ, so that we may have them
 " on the Octaves of the Purification of the
 " Blessed Virgin Mary, wherever we
 " shall then be in England, that by inspect-
 " ing the Record, and Proceedings afore-
 " said, we may cause further to be done
 " therein, what of Right ought to be done,
 " for correcting the Error therein, and do
 " you make it known to the said *John*,
 " that he be there, then to proceed in the
 " Plaintiff aforesaid, and further to do,
 " and receive that which our Court shall
 " adjudge in the Premises. Witness, our
 " Self at Westminster, on the eighteenth
 " Day of December, in the seventh Year
 " of our Reign.

L A Y T O N.

Allowed, *Richard Pyne*.

The Record, and Proceedings of the *The Return of*
 Plaintiff, whereof mention is within made, ^{the Writ of} *Error*,
 I certify to our Sovereign Lord the King,
 where

Proceedings in Error.

wheresoever; &c. at the Day, and Place within contained, in the Record to this Writ annex'd, and I have made it known to the within named *John Lynch*, that be there at that Time, to proceed in the Plaintiff aforesaid, as I am commanded to do.

So answereth *Richard Pyne*.

plaints.

Pleas before our Sovereign Lord the King, at the King's Court of Trinity Term, in the seventh Year of the Reign of our Sovereign Lord William the Third, King of England, Scotland, France, and Ireland, Defender of the Faith. Witness Sir Richard Pyne, Knight.

SAVAGE.

A Writ of Error to impower the Chief Justice of Ireland, to examine the Record, and Proceedings there.

OUR Sovereign Lord the King, hath sent to his trusty and well-beloved Counsellor, Sir *Richard Pyne*, Knight, his Writ Close, in these Words, (that is to say) *William the Third*, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, &c. to our trusty, and beloved Counsellor, Sir *Richard Pyne*, Knight, Greeting: Because in the Record, and Proceedings, and also in giving Judgment, in a Plaintiff, which was

before

“ before you, and your Brethren our Ju-
“ stices of the Common Bench of the King-
“ dom of *Ireland*, by our Writ, between
“ *John Lynch*, Plaintiff, and *Richard*
“ *Coote*, Esq; Defendant, in a Plea of *Tres-*
“ *pass*, and *Ejectment*, manifest Error in-
“ tervened, (as it is said) to the great Da-
“ mage of the said *Richard*, as we have
“ received Information from his Com-
“ plaint. *We willing* the Error, if any there
“ is, be in a due Manner corrected, and full
“ and speedy Justice done to the Parties
“ aforesaid, in this Particular, *We command*
“ you, that if Judgment hath been thereup-
“ on given, then send you under your Seal,
“ distinctly, and plainly, the Record, and
“ Proceedings aforesaid, together with all
“ Things touching the same, and this Writ,
“ so that we may have 'em before us, on
“ the Octaves of the *Purification of the*
“ *Blessed Virgin Mary*, wherever we shall
“ then be in *Ireland*, that inspecting
“ the Record, and Proceedings aforesaid,
“ we may cause further to be done, for
“ correcting the Errors therein, what of
“ Right, and according to the Customs of
“ our Kingdom of *Ireland* ought to be
“ done. Witness our trusty and well-be-
“ loved Counsellor, Lord *Henry Baron*
“ *Capel*, of *Tewkesbury*, Sir *Cyrill Wycb*,
“ Knight, and *William Duncomb*, Esquire,
“ our Justices, and General Governours of
“ our

Proceedings in Error,
our Kingdom of Ireland, at the King's
Courts, on the First Day of February,
in the seventh Year of our Reign.

Carr, and Carr.

*The Return
of the Writ
of Error.*

By Virtue of this *Writ*, to me directed, I humbly certify to our Sovereign Lord the King, the Record and Proceedings of the Plaintiff, whereof mention is within made, together with all Things touching the same, as this Writ doth direct, and require.

Richard Pyne.

Pleas.

Pleas at the King's Courts, before Sir Richard Pyne, Knight, and his Brethren, Justices of our Sovereign Lord and Lady, William and Mary, King and Queen of England, Scotland, France, and Ireland, Defenders of the Faith, of their Bench, of the Kingdom of Ireland, of Hillary Term, in the fifth Year of their Reign.

W A L K E R

*The Declara-
tion in Ejec-
tion in the
Common
Pleas in Ire-
land, of a Ca-
stle, Manor,
&c.*

*R*ichard Coote, Esquire, was at tac'd to answer to John Lynch, Gentleman, of a Plea, wherefore with Force and Arms, he broke and entered into the Castle, Manor, and Vill, of Gormanstown,

Stowne, and two hundred Messuages, two hundred Cottages, two hundred Gardens, one hundred Orchards, three Wind Mills, three Fulling Mills, one thousand Acres of Land, one thousand Acres of Meadow, one thousand Acres of Pasture, and one thousand Acres of Furze, and Heath, with the Appurtenances in the *Vills*, and Land of *Gormanstowne*, *Carrowstowne*, *Richardstowne*, *Boltray*, *Leogdeory*, *Balloy*, *Stamulni*, and *Caddellstowne*, all, and singular which Premises, lye in the Barony of *Duleeke*, and County aforesaid, which *Jenico Preston*, Gentleman, commonly called *Jenico*, Viscount *Gormanstowne*, demised to the said Plaintiff, *John Lynch*, for a Term which is not yet past, and ejected the said *John Lynch*, from his Farm aforesaid, for his Term aforesaid therein, not yet expired, and did him other Wrongs, to the great Damage, &c. and against the Peace, &c. and whereupon the said *John Lynch*, by *Michael Hall* his Attorney, complains, That whereas the said *Jenico Preston*, on the first Day of *May*, in the Year of our Lord, One thousand six hundred ninety three, at *Gormanstowne*, in the County aforesaid, demised, and to farm, let, to the said *John Lynch*, the Castle, Manor, and *Vill* of *Gormanstowne*, and two hundred Messuages, two hundred Cottages, two hundred Gardens, one hundred

Proceedings in Error,

dred Orchards, three Wind Mills, three Fulling Mills, one thousand Acres of Land, one thousand Acres of Meadow, one thousand Acres of Pasture, and one thousand Acres of Furze, and Heath, with the Appurtenances in the *Vills*, and Land of *Gormanstowne*, *Carrowstowne*, *Richardstowne*, *Boltray*, *Leogdeory*, *Bally*, *Stamulni*, and *Caddellstowne*, all, and singular which Premises, lye in the Barony of *Duleeke*, and County aforesaid, *To have, and To hold*, all, and singular the demised Premises, to the said *John Lynch*, his Executors, Administrators, and Assigns, for the Term of twenty one Years, thence next following, by Virtue of which said Demise, the said *John Lynch*, on the second Day of the Month of *May* aforesaid, in the Year of our Lord, One thousand six hundred and ninety three, entered into the said demised Premises, with the Appurtenances, and was possessed thereof, and being so possessed thereof, he, the said *R. C.* on the third Day of *May*, in the Year aforesaid, with Force, and Arms, entered into the said demised Premises, in, and upon the Possession thereof of the said *John Lynch*, and with Force, and Arms, ejected, expelled, and removed the said *John* from his Farm aforesaid, (his Term aforesaid therein being unexpired) and did, and now doth withhold the said *John* from his Farm aforesaid,

aforesaid, being so expelled therefrom, and then, and there, did him other Injuries, against the Peace of our Sovereign Lord, and Lady, the now King, and Queen, to the great Damage of the said *John*; whereupon he declares he is injured, and endamaged, to the Value of four thousand Pounds Sterling, and therefore he brings his Suit, &c.

And the said *R.* by *R. P.* his Attorney comes, and defends the Force, and Injury, when, &c. and pleads that he is in no wise Guilty of the Premises above charged upon him, in such Manner and Form, as the said *John* complains against him, and thereof he puts himself upon the Country, and the said *John* doth likewise the same, therefore the Sheriff is commanded, that he cause to come here *in fifteen Days from Easter Day*, twelve, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same Day is given to the said Parties to be here, &c.

Afterwards the Process being there-
upon continued between the Parties afore-
said, the Jury are thereupon respited
in the said Action here, unto this Day,
(*that is to say*) in fifteen Days from
the Day of Saint *Hillary*, then next fol-
lowing, before which Day, our said
Sovereign Lady *Mary*, late Queen of
England, departed this Life, after whose

The Jurors are
Bar.

The Demise of
the Queen.

Proceedings in Error,

A full Jury at
Bar.

Verdict for the
Plaintiff.

Judgment.

Decease (*that is to say,*) on the fifteenth Day of Saint *Hillary*, as well the said *I. L.* Gentleman, as the said *R. C.* Esquire by their Attornies aforesaid appear, and the Jury thereupon impanell'd, being called, likewise appear'd, who being elected, tried, and sworn to declare the Truth of the Premises, do upon their said Oath *declare*, that the said *R. C.* is guilty of the *Trespass* and *Ejectment* aforesaid, in such Manner and Form, as the said *I.* declares against him; and they do assess the Damages of the said *John* occasioned by the *Trespass* and *Ejectment* aforesaid, besides his Expences and Costs, laid out by him about his Suit in this Cause, to twelve Pence Sterling, and for those Expences and Costs to six Pence. *Therefore it is adjudged*, that the said *I. L.* Gentleman, *do recover* against the said *R. C.* his Term aforesaid, yet to come, of, and in the said Premises, with the Appurtenances, and his Damages aforesaid, assesse'd by the said Jury to eighteen Pence, in the Manner aforesaid, and also thirty six Pounds, six Shillings, and nine Pence, adjudged by this Court, to the said *I. L.* with his Consent for his Expences and Costs aforesaid, by way of Increase, which said Damages in the whole, amount to thirty six

six Pounds, eight Shillings and three Pence, and be the said *R. C. &c.* taken, &c.

Examined by *W A L K E R.*

Afterwards (*that is to say*) on <sup>A Scire Fac-
tus</sup> Friday next after the Morrow ^{as awarded} <sub>Quare Execu-
tio non.</sub> of the *Holy Trinity*, this same Term, the ^{as awarded} <sub>Quare Execu-
tio non.</sub> said *I. L.* by *Charles Redman*, his Attorney appears before our Sovereign Lord the King, at the King's Courts ; and the said *John* prays a Writ of our Sovereign Lord the King, to summon the said *R. C.* to be before our said Sovereign Lord the King, to shew if he hath, or knows of any thing to say for himself, why the said *I. L.* ought not to have his Execution against him, of, and upon the Judgment aforesaid, and it is granted to him, &c. by which the Sheriff of the County aforesaid, is commanded that by Honest Men, &c. he make it known to the said *R. C.* that he be before our Sovereign Lord the King, on Tuesday next *after the Morrow of the Holy Trinity*, *wheresoever*, &c. to shew Cause in the manner aforesaid, if, &c. and further, &c. the same Day is given to the said *John*, to be there, &c. at which Day the said *I. L.* appears before our Sovereign Lord the King, at the King's

The Plaintiff
offers himself
on the fourth
Day of the
Plea.

The Sheriff
returns a Nihil.

*An alias scire
facias awarded.*

A Bill of Ex-
ceptions pro-
duced.

Proceedings in Error,

Courts, by his Attorney aforesaid, and offers himself on the fourth Day of the Plea, against the said *R. C.*, in the said Action, and he being solemnly called, appears not, and the Sheriff doth now return here, that the said *R. C.* hath nothing, &c. nor is he to be found, &c. therefore the Sheriff of the said County, is as before commanded, that by honest Men, &c. he make it known to the said *R. C.* that he be before our said Sovereign Lord the King, at the King's Courts, on Wednesday next *after the Morrow of All Soul*, *wheresoever*, &c. to shew Cause in the manner aforesaid, if, &c. the same Day is given to the said *I. L.* &c. *At which Day* as well the said *I. L.* by his said Attorney, as also the said *R. C.* by *L. M.* his said Attorney, appear before our Sovereign Lord the King at the King's Courts, and thereupon the said *R. C.* brings here into this Court of our said Sovereign Lord the King, before the King himself, a Bill of Exceptions, with the Seal of Sir *Richard Pyne*, Knight, second Justice of our said Sovereign Lord the King, of his Common Bench, of his Kingdom of *Ireland*, and Sir *John Jefferson*, Knight, one of the Justices of the same Court, at the Request of the said *R. C.* thereto affixed, according to the Form of the Statute in such Case, made and provided, (as it is affirmed,) .

affirmed,) desiring it to be here enrolled, and it is granted, &c. which said Bill follows in these Words, (*that is to say*) *Be it remembred*, that *John Lynch*, Gentleman, before Sir *Richard Pyne*, ^{The Bill of Exceptions.} Knight, and his Brethren, Justices of our with a recital Sovereign Lord the King, of his Bench of the Record, in the Kingdom of *Ireland*, at the King's Courts at *Dublin*, prosecuted a Plea of Trespass and Ejectment against *Richard Cooke*, Esquire, by a Writ of our said Sovereign Lord the King, and the late Queen, suggesting by his Declaration, upon his Writ aforesaid, that *Zenico Preston*, Gentleman, commonly called *Zenico Lord Viscount Gormanstowne*, on the first Day of *May*, in the Year of our Lord, One thousand six hundred ninety two, at *Gormanstowne*, in the County of — had demised, and to farm let, unto the said *I. L.* the Castle, Manor, and *Vills of Gormanstowne*, (*so reciting the Declaration, as is before mentioned*) to which said Declaration, the said *R. C.* by *R. P.* his Attorney, came into the same Court, before the said Justices, and defended the Force and Injury, when, &c. and pleaded that he the said *R. C.* was not guilty of the *Trespass* and *Ejectment* aforesaid, and thereof he put himself on the County; and the said *I. L.* did likewise the same. And now here at the Trial of the Issue aforesaid,

Proceedings in Error

Evidence given for the Plaintiff.

said, between the Parties aforesaid, **R. R.** Esquire, of Counsel with the said Plaintiff, to maintain the Issue aforesaid, on the Part of the said Plaintiff, and to prove the Title of the said *Jenico Preston*, the Lessor of the Plaintiff to the demised Premises aforesaid, at the Time of the Demise, made as aforesaid, gave in Evidence to the said Jurors, an *Act* of our late Sovereign Lord *Charles the Second*, King of *England*, of the Parliament of his Kingdom of *Ireland*, in a Parliament of our said Sovereign Lord, King *Charles the Second*, begun at *Dublin*, in his said Kingdom of *Ireland*, on the eighth Day of *May*, in the thirteenth Year of the Reign of our said late Sovereign Lord, King *Charles the Second*, and there continued by several Prorogations, until the twenty sixth Day of *October*, in the seventeenth Year of the Reign of the same King; intitled, "An *Act* for the better explaining of some Doubts, arising upon an *Act*, intitled, An *Act* for the better Execution of his Majesty's gracious Declaration, for the Settlement of his Kingdom of *Ireland*, and Satisfaction of the several Interests of Adventurers, Soldiers, and others, his Subjects there, and for making some Alterations of, and Additions, unto the said *Act*, for the more speedy and effectual Settlement of the said Kingdom."

An *Act* of Parliament, made
8 May. 13
Car. II.

By

By which said Act of Parliament, it is enacted, That, &c. (*all the Particular Matters given in Evidence, must be recited*) He gave also in Evidence, that the said *Jenico, Viscount Gormanstowne*, after making the said Indenture, (*that is to say*) on the eighteenth Day of *October*, in the Year of our Lord, one thousand six hundred and ninety, died without Issue Male, begotten of his Body ; and that the said *Jenico*, the Lessor of the now Plaintiff, and *Jenico Preston*, the eldest Son of *Nicholas Preston*, Brother of *Jenico Preston*, late Viscount *Gormanstowne*, mentioned in the Indenture of Lease aforesaid, is one and the same, and not different Persons, and that the said *Jenico Preston*, the Lessor of the now Plaintiff, demised the demised Premises aforesaid, to the said *John Lynch*, in such Manner and Form, as is expressed in the Declaration aforesaid ; and that the said *John Lynch*, by Virtue of the Demise aforesaid, entered, and was thereof possessed, until the said *Richard Coote* ejected him, in such Manner, and Form, as the said *John Lynch* above complains against him.

Nebemiah Donnelland, Esquire, Prime Serjeant at Law, of our Sovereign Lord the King, offered to prove, and give in Evidence, to the said Jurors on the Part of the said *R. C.* that the said *Jenico*

The Death of
Jenico Preston,
without Issue
Male.

Averment of
Indemnity.

The Lease, En-
try, and Ouster.

The Defen-
dants Counsel
give their Evi-
dence.

Proceedings in Error,

had no Seisin, Interest, or Title, in, or to the said *Vills*, Lands, and Tenements, and that he cou'd not recover the Possession, mentioned in the Declaration aforesaid, in such Manner and Form, as the said *Jenico* proposed by his said Suit, and that the said *Richard* was not *Guilty* of the Trespass and Ejectment aforesaid, and that all and singular the Vills, Lands, and Tenements aforesaid, mentioned in the Declaration, were seised, and sequestred into the Hands, and to the use of *Charles* the First, late King of *England*, after the twenty third Day of *October*, in the Year of our Lord, One thousand six hundred and forty one. And the said *N. Donnelland*, on the Part of the said Defendant, produced, and gave in Evidence to the said Jurors, that it is further provided by the said Act, " That the said Commissioners for putting the said Act in Execution, &c. " (*reciting as much of the Act, as was thought necessary*) And the said *N. Donnelland*, further offered, and wou'd have proved in Evidence to the said Jurors, that the Lands, Tenements, and Premises mentioned in the Declaration aforesaid, were in the Seisin of the said *R. C.* at the time of making the said Act, as Assignee of the said Earl of *Mountrobb*, being the Son of the said Earl, and the Lands aforesaid being duly assigned, and duly limited.

The Explanation Act.

ed to him, and his Heirs, according to the true Intent of the said Act. And that the said Lands in the Declaration, were the Lands of the said Viscount *Gormanstowne*; and by the said Clause or Provision, to be restored to him after a Reprisal made to the said *Richard*, and that the said Lands, and Tenements, do, and at the time of making the said Act of Explanation, did contain one thousand four hundred Acres of Land, and that no other forfeited Lands were assigned to the said *Richard*, as Assignee to the said Earl, or to any other Person, the Heirs or Assigns of the said Earl, in Satisfaction thereof, except Lands containing one thousand and one hundred Acres, and no more; and that no Satisfaction was made, for the Rents, Advantages, or Profits, of the said Lands, received by the said Lord Viscount *Gormanstowne*, named in the said Act, or by his Agents, after the Entry upon the Premises, made by him as aforesaid; and for these Reasons, and until the full Number of one thousand four hundred Acres be assigned to the said *Richard*, in Satisfaction of the said one thousand four hundred Acres, mentioned in the said Declaration. And until Satisfaction be made to him, for the Rents, and Profits of the Premises aforesaid, according to the true Intention of the said Act, the said

said Viscount, or his Assigns, ought not to be restored to the Tenements aforesaid, mentioned in the Declaration aforesaid. And the said *N. Donnelland*, further shewed, and gave in Evidence to the said Jurors, that the said *Jenico*, late Viscount *Gormanston*, was restored by the said Act, but was attainted of High Treason, committed against our Sovereign Lord the King, that now is, and our late Sovereign Lady the Queen, (that is to say) on the tenth Day of *April*, in the third Year of their Reign, by virtue whereof, all his Lands, and Tenements were forfeited to the said King and Queen, without any Office, or Inquisition to be found thereof according to the Form of the Statute in such Case, made and provided, and by Reason thereof were seised into the Hands of our said Sovereign Lord the King, that now is, and of our Sovereign Lady, the late Queen, whereby the said *Jenico* mentioned in the said Declaration, could obtain no Possession, or Seisin by his Entry, because the Hands of our said Sovereign Lord the King, that now is, and our said Sovereign Lady the Queen, were not from thence removed, so that for that Reason, the Demise of the Premises aforesaid, supposed to be made to the said *John Lynch*, was Invalid, and of no Effect ; and further he shewed and gave in Evidence to the said Jurors, that

an

No amercias
 M. M.

an Instrument produc'd in Writing on the Part of the Plaintiff, importing an Introl-
ment in the Exchequer, of an Order made by the said Commissioners for the Execu-
tion of the said Act of Parliament, (*to
wit*) An Order bearing date on the first Day of *January*, in the Year of our Lord, one thousand six hundred and sixty eight, shewn in Evidence to the said Jurors, by *Robert Rotchford*, Esquire, of Counsel for the Plaintiff, ought not to have been given in Evidence to the said Jurors, without Proof thereof, upon the Oath of Witnesses, that the said Order was signed, and sealed by the said Commissioners, because it was not of Record, nor was any Order of itself a Record; and he the said *N. D.* desired the said Justices before whom was the Trial of the Issue aforesaid, to inform the said Jurors, and declare to them, the Law, of, and concerning the Premises, and that the Demise aforesaid, made to the (Plaintiff) was Invalid, for the Reason aforesaid, and that the said *Jenico Preston*, ought not to be restored to the Premises, for the Impediment and Reasons aforesaid, which according to the Form, and Effect of the said Statute, ought to be removed before he should be restored, but the said Justices affirmed to the said Jurors, that the Matter shewn by the said *N. D.* in the Manner and Form aforesaid, was of

That the Plaintiff's Counsel gave that for Evidence which was not so.

The Judges are desired to inform the Jury of the Law.

But they af-
firmed that to
be Law, which
the Defendants
Counsel appre-
hended to be
not Law.

Proceedings in Error,

Wherfore the
Defendants
Counsel pray-
eth the Judges
to seal a Bill of
Exceptions.

which they
did.

no Effect to preclude the said *Jenico*, or the said (*Plaintiff*) from having, or maintaining the said Action, whereupon the said *N. D.* in as much as the Matter aforesaid shewn by him, and produced and given in Evidence to the said Jurors, would in no wise appear by the Verdict of the said Jurors, requested the said Justices according to the Form of the Statute in such Case, made and provided, to seal this present Bill of Exceptions, which contains in it self, the Matters aforesaid, shewn by the said *N.* in Evidence to the said Jurors, in the Manner, and Form aforesaid, which said Justices, at the Request of the said *N.* according to the Form of the Statute in such Case made and provided, Sealed this present Bill at the Kings Courts aforesaid, on the fourth Day of *February*, in the Year of our Lord, One thousand six hundred and ninety four.

R. Cox.

John Jefferson.

And the said *Richard Coote*, prays a Writ of our Sovereign Lord the King, to summon the said Sir *Richard Cox*, Knight, and Sir *John Jefferson*, Knight, the Justices aforesaid, that they be before our said Sovereign Lord the King, where- soever, &c. and it is granted to them, &c. by which the said Justices are com- manded

manded, that they be before our said Sovereign Lord the King, on Saturday next after the Morrow of Saint Martin, wheresoever, &c. to deny, or acknowledge, A Scire facias awarded to the Justices, to deny or acknowledge their Seals.

the Bill of Exceptions, asserted to have been sealed by them, as aforesaid, according to the Form and Effect of the Statute, &c. at which Day the said *Richard Cox*, and *John Jefferson*, Personally appear before our said Sovereign Lord the King, at the King's Court, and acknowledge the Seals asserted to have been put to the said Bill of Exceptions, to be the Seals of the said *Richard Cox*, and *John Jefferson*, and thereupon the said *Richard Coote*, brings into this Court of our said Sovereign Lord the King, before the King himself, another Writ of Error, in the Premises, directed to Sir *Richard Reynell*, Knight, and Baronet, Chief Justice of our said Sovereign Lord the King in these Words, (*that is to say*) The Justices appear, and acknowledge their Seals. Another Writ of Error to the Court of King's Bench in Ireland.

“ *William the Third, King of England, Scotland, France, and Ireland, Defender of the Faith, &c.* To our “ trusty and well-beloved Counsellor, “ Sir *Richard Reynell*, Knight, and Baronet, our Chief Justice assigned to “ hold Pleas before us in our Kingdom “ of *Ireland*, and his Brethren our Justices there, *Greeting* : Forasmuch as “ in the Record, and Proceedings, on a “ Plaintiff which was levied in the Court “ of

Proceedings in Error,

" of Common Bench of us, and of the
 " Lady *Mary* the late Queen, before our
 " trusty and beloved Counsellor, and of our
 " late Queen *Mary*, Sir *Richard Pyne*,
 " Knight, our Chief Justice, and of our
 " late Queen *Mary*, of the same Bench ;
 " and also in giving Judgment on the same
 " Plaintiff, which was given in our Court
 " of Common Bench, between *John Lynch*, Gentleman, Plaintiff, and *Richard Coote*, Esquire, Defendant, of
 " a Plea of *Trespass*, and *Ejectment* ;
 " manifest Error intervened, (as it is al-
 " ledged) to the great Damage of the
 " said *Richard*, as we have received In-
 " formation from his Complaint; *we com-*
 " *mand you*, that you inspecting the
 " Record and Proceedings aforesaid,
 " cause further to be done for correcting
 " the Errors therein, what of Right,
 " and according to the Law and Customs
 " of our Kingdom of *Ireland*, ought to
 " be done. Witness our faithful and well-
 " beloved Counsellor, *Henry Lord Bar-*
 " *ron Capell*; of *Tewkesbury*, deputed our
 " General Governor of our Kingdom of
 " *Ireland*, at the King's Courts, on the
 " thirty first day of *May*, in the seventh
 " Year of our Reign.

Carr, and *Carr for Carr*.

Allowed *R. Reynall*.

And

And thereupon the said *Richard Coote*, by his Attorney aforesaid, comes and pleads, that in the Record and Proceedings aforesaid, and also in giving Judgment aforesaid, there is manifest Error in this Respect (*that is to say*) that by the Record and Proceedings aforesaid, it doth appear, that the Judgment given in the Plea aforesaid, was given for the said *John Lynch*, against the said *Richard Coote*, whereas by the Law of the Land of this Kingdom of *Ireland*, Judgment ought to have been given for the said *Richard Coote*, against the said *John*, by Reason of which, and other Errors being in the Record, and Proceedings aforesaid, he the said *Richard Coote*, prays that the said Judgment be reversed, annulled, and rendered ineffectual, &c. And that he may be restored to all Things, which he hath been deprived of, by Reason of the Judgment aforesaid ; at which *Saturday, after the Morrow of Saint Martin*, as well the said *Richard*, as the said *John*, by their Attorneys aforesaid, appear before our said Sovereign Lord the King, whereupon the said *Richard* as before, avers, that in the Record, and Proceedings aforesaid, and also in giving Judgment as aforesaid, manifest Error intervened, alledging the Error aforesaid, above assygned by the said *Richard* in the Manner aforesaid,

Errors assygned.
ed.

The Plaintiff
in Error, assygned Errors.

Proceedings in Error,

said, and prays that the Judgment aforesaid, for that, and other Errors being in the Record, and Proceedings aforesaid, may be reversed, annulled, and rendered altogether ineffectual, and that he may be restored to all things which he hath been deprived of, by Reason of the Judgment aforesaid, and that the said *John* rejoin to the Errors aforesaid, and that the Court of our said Sovereign Lord the King, may now here proceed to an Examination, as well of the Record and Proceedings aforesaid, as of the said matter above assigned for Error; and the said *John Lynch* avers, that neither in the Record, or Proceedings aforesaid, nor in giving the Judgment aforesaid, is there any Error whatsoever; and he likewise prays, that the Court of our said Sovereign Lord the King, may proceed to an Examination, as well of the Record and Proceedings aforesaid, as of the said Matter above assigned for Error, and that the Judgment aforesaid, may be in all Respects affirmed; and because the Court of our said Sovereign Lord the King, is not yet advised what Judgment to give, of, and upon the Premises, a Day therefore is given to the Parties aforesaid, to be before our said Sovereign Lord the King; 'till the Octaves of Saint Hillary, wherever he shall then be in Ireland, to hear their Judgment; of, and

The Defendant in Error,
pleads *in nullo
et erratum.*

and upon the Premises, for that the Court of our said Sovereign Lord the King, are not yet, &c. at which Day, the said Parties by their said Attornies, came before our said Sovereign Lord the King, at the King's Courts ; whereupon the Premises being viewed, and by the Court of our said Sovereign Lord the King, fully understood, and upon diligent Examination as well the Record and Proceedings and the Judgment thereupon, as also of the said Causes above assigned for Error, by the said *Richard Coote*, and upon mature Deliberation thereupon had, *it appears* to this Court of our said Sovereign Lord the King, that there is no Error in the Record ; *therefore it is adjudged*, that the said Judgment be in all Respects affirmed, and that it remain in full Force and Effect, (the said Cause and Matters above assigned for Error, in any wise notwithstanding.) And it is *further adjudged*, that the said *J. L.* do recover against the said *R. C.* eighteen Pounds, sixteen Shillings Sterling, for his Damages and Costs, which he has sustained by Reason of delaying the Execution of the Judgment aforesaid, by means of prosecuting the said Writ of Error in the Premises, and that the said *J. L.* have his Execution thereon.

The Judg-
ment of the
Court, that the
Judgment be
affirmed.

Afterwards (*that is to say*) on *Fri-*
day next after the Morrow of Saint

A a *Martin,*

Errors assign-
ed in England.

Martin, this same Term the said *R. C.* appears before our said Sovereign Lord the King at *Westminster*, by *John Lilly* his Attorney, and declares that in the Record, and Proceedings aforesaid, and also in giving Judgment aforesaid; and moreover in the Affirmance thereof there is *manifest Error* in this respect, (*that is to say*) that by the Record of the Judgment aforesaid, and the Affirmance thereof it doth appear, that the Judgment aforesaid was given, and affirmed in the manner aforesaid, for the said *John Lynch*, against the said *Richard Coote*, whereas by the Law of the Land of the said Kingdom of *Ireland*, Judgment ought to have been given for the said *Richard Coote*, against the said *John*, therefore it is manifestly Erroneous in that Respect, and this the said *Richard* is ready to verify, wherfore he prays, that the said Judgment, and the Affirmance thereof for those, and other Errors being in the Record and Proceedings aforesaid, be reversed, annulled, and rendered altogether ineffectual, and that he the said *R. C.* be restored to all Things, which he hath been deprived of, by reason of the Judgment aforesaid, and the Affirmance thereof, and that the said *John* may join to those Errors. And the said *John* by *Jonathan Bolt* his Attorney, comes (*gratis*) here into this Court, and having heard

the

In Nullo est
Erratum.

the Errors aforesaid, he forthwith pleads, that neither in the Record, and Proceedings aforesaid, or in giving the Judgment aforesaid, or in the Affirmance thereof, is there any Error whatsoever, and prays that the Court of our said Sovereign Lord the King, may proceed to an Examination, as well of the Record and Proceedings aforesaid, as also the Matter above assigned for Error, and that the said Judgment be in all things affirmed, and because the Court, &c.

*Error assigned in Parliament, 4 May,
1697.*

“ **W**ILLIAM the Third, by The Writ of
“ the Grace of God, King of Error in Par-
“ *England, Scotland, France, and Ire-*
“ *land, Defender of the Faith, &c.* To
“ our trusty and beloved Sir *John Holt*,
“ Knight, assigned to hold Pleas before
“ us, *Greeting*: Because in the Record,
“ and Proceedings of a certain Plaintiff,
“ which was levied in our, and our late
“ Queen *Mary's* Court of Common Bench,
“ of the Kingdom of *Ireland*, before Sir
“ *Richard Pyne*, Knight, and his Bre-
“ thren, and our said late Queen's Chief
“ Justice, of the same Court, by our
“ Writ, and of the said late Queen,
“ and also in giving Judgment of the
“ said Plaintiff, which was given in
“ our Court of Common Bench afore-

A a 2 “ said,

Proceedings in Error;

" said, between *John Lynch*, Gentleman,
 " and *Richard Coote*, Esquire, in a
 " Plea of Trespass and Ejectment, done
 " to the said *John*, by the said *Richard*,
 " which said Record, and Proceedings,
 " with the Causes of Error, we caused to
 " be brought before us, in our said King-
 " dom of *Ireland*, and the Judgment
 " was thereupon affirmed in our King-
 " dom of *Ireland*; and we thereupon
 " caused the said Record and Proceed-
 " ings, with the Cause of the Error
 " intervening therein, to be brought be-
 " fore us in *England*, and the Judgment
 " is thereupon affirmed before us in *Eng-*
 " *land*, manifest Error intervened, (as
 " it is said) to the great Damage of the
 " said *Richard*, as we have received In-
 " formation, from his Complaint. *We*
 " willing that the Error, if any there is,
 " be duly corrected, and full and speedy
 " Justice done to the Parties aforesaid,
 " *We command you*, that if the Judg-
 " ment in the Common Pleas of our
 " Kingdom of *Ireland*, and in our Court
 " before us in *England*, be affirmed, then
 " do you without delay, plainly, and
 " distinctly, certify the Record, and Pro-
 " ceedings aforesaid, together with all
 " things touching the same, to us, in
 " our present Parliament, that we in-
 " specting the Record and Proceedings
 " aforesaid, with the Consent of the
 " Lords

" Lords Spiritual, and Temporal, in Par-
 " liament assembled, for correcting those
 " Errors, may further cause to be done,
 " what of Right, and according to the
 " Law and Customs of this our King-
 " dom of *England*, ought to be done.
 " Witnes ourself at *Westminster*, on the
 " twenty sixth Day of *January*, in the
 " ninth Year of our Reign.

S. T E R R Y.

The Answer of Sir *John Holt*, Knight,
the Chief Justice, within named.

Pleas before our Sovereign *Lord the King*, Placita.
 at *Westminster*, of Michaelmas Term,
 in the eighth Year of the Reign of our
 Sovereign *Lord*, *William the Third*,
 now *King of England, &c.* Roll. 347

A T which Day the said Parties The Judgment in the King's Bench.
 come before our Sovereign *Lord the King*, at *Westminster*, by their said
 Attornies, and all, and singular the Pre-
 mises being viewed, and fully understood,
 by the Court of our said Sovereign *Lord the King*, now here, and upon diligent ex-
 amination, and inspection, as well of the
 Record and Proceedings aforesaid, and the
 Judgment given thereupon, as also of the
 said Causes and Matters by the said *Rich-
 ard Coote*, assigned for Error, in as
 much as it appears to our said Sovereign
Lord the King, that neither in the Re-

cord, and Proceedings aforesaid, nor in giving the Judgment aforesaid, is there any Error whatsoever, and that the Record is in no way vicious, or defective. *It is adjudged*, that the said Judgment be in all Respects affirmed, and remain in its full Force, and Effect, (the said Causes and Matters assigned for Error, in any wise notwithstanding) and it is further adjudged, by this Court of our said Sovereign Lord the King, that the said *John Lynch*, do recover against the said *Richard Coote*, forty four Pounds, now here adjudged in the said Court of our said Sovereign Lord the King, according to the Form of the Statute in such Case, made and provided, to the said *John Lynch*, for his Expences, Costs, and Damages, which he hath sustained by reason of delaying the Execution of his Judgment aforesaid, by means of prosecuting the said Writ of Error, and that the said *Lynch*, have his Execution on thereupon, &c.

The Assignment of Errors in Parliament.

Afterwards, (*that is to say*) on the fourth Day of *February*, in the tenth Year of the Reign of *William the Third*, now King of *England*, &c. the said *Richard Coote*, by *John Lilly*, his Attorney, comes and pleads, that in the Record, and Proceedings aforesaid, and also in giving Judgment aforesaid, and in the several Affirmances of the Judgment aforesaid

said, mentioned in the said Record, there is *manifest Error* in this Respect, (*that is to say*) it doth appear by the said Record, that the Judgment aforesaid, given by the said Court of our said Sovereign Lord the King, before our said Sovereign Lord the King, at the King's Courts, in the Kingdom of *Ireland*, and in all things affirmed in the Court of our said Sovereign Lord the King, before the King himself, whereas, no such Affirmance of the Judgment aforesaid, ought to have been given, therefore it is in this respect, manifestly Erroneous, and he prays that the Judgment aforesaid, for that, and other Errors, that are in the Record, and Proceedings aforesaid, be reversed, annulled, and rendered altogether ineffectual, and that he be restored to all things which he hath been deprived of, by means of the Judgments aforesaid, and that the said *John Lynch* rejoyn to the Errors aforesaid.

E. N O R T H Y.

And the said *John* pleads, that neither *In Nullo est in the Record, and Proceedings afore- Erratum.* said, nor in giving Judgment aforesaid, is there any Error whatsoever, and he also prays, that this High Court of Parliament, may now here proceed to an

A a 4 Examination,

Examination, as well of the Record, and Proceedings aforesaid, as of the Premises above assigned, and alledged for Error, by the said *Richard Coote*, and that the said Judgment be in all things affirmed.

C A R T H E W.

F I N I S.

A

T A B L E

to the

P R E C E D E N T S

in

E J E C T M E N T.

The History of the Action of Ejectment.

What an Ejectment is: page 1.
Of the History of the Action.

p. 2.

That in antient times the Writts of Entry, and Assize, were the usual Means for the Recovery of Possessions. ibid.

How the Law stood untill 14 of H. VII. ibid.

How, and for what reason the Law came to be altered. p. 2, 3.

The Foundation of the Common Rule in Ejectment. p. 3, 4.

Who invented it, and for what reason. p. 5.

¶

A T A B L E to the	
Of the Writ, or Process in Ejectment.	
<i>The Form of the Writ.</i>	p. 6.
<i>That it was modelled from an Assize.</i>	ibid.
<i>A Remark in the Register thereupon.</i>	p. 7.
<i>That an Ejectment is not a proper Action for the Mesne Profits, and why,</i>	p. 8.
<i>Why the Writ begins with pone per vadious, & salvos plegios.</i>	p. 8, 9.
<i>For what Reason Pledges are inserted.</i>	p. 9, 46.
<i>Why the second Part of the Process is by Capias and Distress infinite.</i>	p. 10.
<i>Where a Declaration in Ejectment is ill, and what is aided by the Statute of Jeofails,</i>	p. 11.
<i>Of the Modern Process in this Action.</i>	p. 11, 12.
<i>The Notice to the Tenant in Possession.</i>	p. 12.
<i>Of the Oath of the Service of the Declaration.</i>	p. 12, 13.
<i>Of the Motion for Judgment against the Casual Ejector.</i>	p. 13.
<i>The Form of the Common Rules in the King's Bench, and Common Pleas.</i>	p. 14, 15, 16.
<i>The Remedy for the Non-Performance.</i>	p. 16.
<i>When</i>	

Precedents in Ejectment.

When the Rule to be drawn up generally,
and when specially. p. 16, 17.

That no Person was admitted to defend
in Ejectment, but the Tenant in Pos-
session, because it was an *Act of Cham-*
perty for another Person to interpose
to cover the Possession with his Title.

p. 18.

That the Statute of 8 & 9 W. 3. cap. 10.
gave Costs to a Stranger made Defen-
dant, unless the Judge certifies, &c.

p. 18.

That the Rule in the Common Pleas su-
persedes the necessity of an Original
Writ, and why. p. 18.

That in the King's Bench there is no
need of a Latitat, or a Bill of Eject-
ment but in Case of a Writ of Error,
and why. p. 18.

That in the King's Bench they may pro-
ceed by Original, as well as by Bill,
and why. p. 19.

The Benefit of proceeding by Original,
and why. p. 20.

The Rule published the 17th of Charles
II. that no Judgment was to be against
the Casual Ejector, without a Latitat,
and Bail filed, and why. p. 21.

That the Tenant in Possession is not obliged
to accept of a Declaration, or to
confess Lease, Entry, &c. till Bail be
filed. p. 22.

The Remedy where an Attorney takes a
Fee to file Bail, and does it not. p. 22.

The

A T A B L E to the	
The Reason why now there is no Necessity	
for a Latitat.	p. 22.
That if the Party does not come to the	
Affizes, and confess Lease, Entry,	
&c. when he has accepted the Decla-	
ration, he can have no Writ of Er-	
ror, and why.	p. 23.
That the Judgment against the Casual	
Ejector can't be entered before the	
Postea be returned, and why.	p. 23,
	24.
Whether the Term can be enlarged.	p. 24.
	25.
What is to be done where there are di-	
vers Defendants for the same Pre-	
mises.	p. 25, 26.
Where the Attorney is to pay the Costs.	
	p. 26.
Where the Action shall not abate.	ibid.
Where the Plaintiff releases to one in	
Possession.	p. 27.
Of a Construction upon the Confession of	
Lease, Entry, and Ouster.	p. 27,
	28, 29.
What is not an Entry, to avoid a Fine,	
	p. 29, 30.
From whence it is that Judgment is	
given against the Casual Ejector,	
	p. 30.
Of a Release by the Casual Ejector.	
	ibid.
The Difference between the antient Rule	
of the King's Bench, and Common	
Pleas,	

Precedents in Ejectment.

Please, and why the former was new modelled. p. 30, 31, 32.

What is to be done where an Infant is in Possession. p. 32, 33.

Where the Husband and Wife are Lessors in Ejectment, and one dies after entering into the Rule. p. 33.

Where a Stranger carries on a Suit in another's Name who is a Pauper, who shall pay the Costs, p. 33.

Where a Friend or Guardian, shall be set up as Plaintiff, to answer the Costs. p. 33.

That a second Ejectment cannot be brought, 'till the Costs be paid in the first. p. 33, 34.

Where the Proceedings must have been in the antient Method before the late Act of Parliament. p. 34, 35, 36.

Of an Ejectment brought in an inferior Court, and removed, and where the Court will not grant a Proseclendo. p. 37.

And where they will. ibid.

Where the Defendant cannot plead to Jurisdiction of the Cinque Ports, p. 38.

Where the Court will grant an Attachment against the Judge of an inferior Court for compelling an Obedience to their Rules. p. 38.

The Method of the antient Proceeding in Ejectment. p. 38, 39, 40, 41.

The

A T A B L E to the	
<i>The meaning of the Entry in Eject- ment.</i>	p. 41, 42.
<i>The Method of trying a Title of the Estate of Husband and Wife in Right of the Wife.</i>	p. 42.
<i>Recital of the Act of Parliament of the 4th of King Geor.</i>	p. 43, 44, 45, 46.
<i>What cannot be assigned for Error till Diminution alledged.</i>	p. 46, 47.
<i>Of the Words Osteus urus in the Writ.</i>	p. 47.
<i>The Omission of quare Vi & Armis.</i>	p. 47.
<i>Of the Teste of the Writ.</i>	p. 48.
<i>What to be assigned for Error, and what to be alledged in Diminution.</i>	p. 49.
<i>What to be done by the Defendant, where the Plaintiff gets a vicious Original certified.</i>	p. 49.
<i>What allowed to be good after a Verdict.</i>	p. 50.
<i>Where the Defendant in Error may have a new Original to cure a De- fect.</i>	ibid.
<i>That by the Tenant in Possession, ap- pearing and accepting a Declara- tion of Trinity Term, it cures the De- fect of the Lessor of the Plaintiff's Title, being after the Declaration delivered against the Casual Ejector.</i>	p. 50, 51.
<i>Where the Plaintiff shall proceed in the Action to recover Damages, though he could</i>	

Precedents in Ejectment.

could not recover his Possession. p. 51.
Where the Court would not grant an Imparlane. ibid.

The want of an Original after a Verdict is helped, and so of a Bill. p. 52.

That the Plaintiff joining an Assault, and Battery with Ejectment, may release the Damages for the Battery, and take Judgment in Ejectment. p. 52.

Of what things an Ejectment will lie. p. 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64.

That the Design of the Law in this Action is, to have the Thing demanded so particularly specified, that the Sheriff may certainly know what to give the Possession of. p. 57.

Where the Declaration held naught for Uncertainty or Repugnancy. p. 59, 60.

What is a bad Verdict for Uncertainty. p. 61.

That an Ejectment is allowed to be brought for some Things which cou'd not be demanded in a Præcipe quod reddat. p. 54.

That it lies of an Orchard. ibid.

For a Stable and a Cottage. ibid.

Of an House. ibid.

Of a Chamber in the second Story of an House. p. 55.

That it lies not of a Kitchen. ibid.

Nor

A T A B L E to the

*Nor of a Close, without the Contents of
the Quantity, and a Description of
the Quality.* *ibid.*

*That it lies not for five Closes called
Furlongs, containing ten Acres of Ar-
able and Pasture.* *p. 56.*

That it lies for a Vestry. *ibid.*

*The like for a Messuage or Tenement, call-
ed the Black Swan.* *ibid.*

*That it lies not for three Messuages, or
Tenements.* *ibid.*

That it lies not de crofto. *p. 58.*

*What was adjudged a sufficient Certainty
and what not.* *p. 58, 59.*

*Query, if it lies for a Manor, without
describing the Quantity, or Species of
the Land.* *p. 60.*

De castro Villa & Terris held bad. *ibid.*

Without proper Number and Certainty. *60.*

*For ten Acres of Wood, and ten Acres of
Underwood, held sufficient.* *60.*

That it lies for a Coal Mine. *p. 61.*

*But not for a Rent, or Common Appen-
dant, or other things merely in Grant
and why.* *p. 62.*

That it lies for a Boylery of Salt. *p. 62.*

The like pro Stagno. *p. 63.*

The like pro prima Tonsura. *ibid.*

The like pro Herbagio, and Depernagio. *p. 64.*

The like pro pastura centum Ovium. *p. 64.*

That

Precedents in Ejectment.

That it lies for Tythes by Lay Impropriators, though Tythes are an Incorporeal Inheritance. p. 65.

And how to declare for Tythes. p. 66.

67.

That at Common Law an Ejectment lay pro rectoria. p. 67.

And that now it lies pro Capella. p. 68.

Of the Declaration.

Of the Demise, Entry, and Ouster. p. 61.

That it must appear by the Declaration that the Plaintiff had actually the Possession, and was Ousted thereof by the Defendant. p. 68.

That it lies for a Tenant at Will, but not for him in remainder for an Ouster of the Lessee for Years after the Term expires. p. 69.

But an Executor may have this Action for an Ejectment done to the Testator.

p. 69, 70.

That the Lessor of the Plaintiff must have a Right of Entry, when the Action is brought. p. 70.

Where the Issue in Tail is put to his Feme, and cannot have his Ejectment because his Entry is taken away by a Discontinuance. p. 71.

That Possession for twenty Years is good Evidence against the Plaintiff, but not against the King or his Lessee.

ibid.

B b

Nor

A T A B L E to the

*Nor against a Common Person where
there is a Payment of Rent which
amounts to a Possession.* p. 72.

*That the Possession of one Joint Tenant
is the Possession of the other, so as to
prevent the Statute.* p. 72.

*That the King having a Judgment in
an Information of Intrusion, does not
binder a Stranger from Entering and
bringing his Ejectment.* p. 72.

*Nor doth an Outlawry and Inquisi-
tion take away the Entry of a third
Person who claims a Title to the Land
extended.* p. 73.

*Where the Entry of a Stranger gains the
Possession without taking the Rever-
sion out of the Crown.* p. 74.

*Where the Plaintiff could not recover the
Lands, her Entry being taken away
by Lapsing the time allowed her to
enter, and receive the Profits.* p. 74.

75.

*Where an Ejectment may be brought upon
a Provisoe to re-enter for Non-Pay-
ment of Rent.* p. 75.

*That though the Plaintiff by the new
Method of Proceeding is not obliged
to make an Actual Entry or real
Leases, yet he must lay the Commence-
ment of the supposed Lease preceding
the Ouster, but need not expressly men-
tion the Day of the Ouster.* p. 76.

77.

Nor.

Precedents in Ejectment.

Nor the particular Day of his Entry.

p. 78.

Of the Imparlane and Plea Roll, and where the Declaration shall be guided by the Imparlane Roll. p. 78.

That the Plaintiff may declare upon a Lease made after the first day of the Term, but it must appear to be filed after the Lease. p. 79.

Where an impossible Year laid for the Ouster, shall be rejected. p. 79, 80.

What shall be intended after a Verdict.

p. 81.

That where the Limitation of the Lease is altogether uncertain, the Plaintiff cannot recover. p. 82.

What was adjudged good upon a Writ of Error, as to the Ousters being de Tenementis prædict', though the Lease was but of a fourth part of a House.

p. 82.

Where the Delivery shall necessarily be intended the Day the Demise is said to have been made, and not the Day of the Date. p. 83.

Where the Delivery shall be construed to have been on the Day the Demise bears Date. p. 84.

Though a Lease is not obliged to be proved, yet if there be several Lessors who are said to have demised, they must all appear to have a Legal Interest in the whole. p. 84. 85.

A T A B L E to the	
Of a Title by Joint Tenants, and Tenants in Common.	p. 85, 86.
The like of Coparceners.	p. 86.
The most proper Method for such Persons to try their Title.	p. 86.
That an Heir cannot bring an Ejectment though pending the Suit, his Ancestor dies, by which his Right incurs.	p. 87.
That a Lease made by a Guardian to try the Title of an Infant is good.	p. 87.
So by Baron and Feme.	ibid.
Where the Husband ought to join in the Lease.	p. 88.
What will not be good Evidence upon a Declaration on a Lease made by Baron, and Feme.	p. 88.
How a Copy-holder is to declare.	p. 89.
The like of his Lessee.	p. 89.

Of the Plea, and General Issue.

What the General Issue is.	p. 89.
A general Rule in the Issue in this Action, that whatsoever bars the Right of Entry, is a Bar to the Plaintiff's Title.	p. 89.
What are good Pleas in this Action.	ibid.
Of the Statute of the 32 of H. 8. cap. 33. where non-Claim shall not take away the Entry, and who are within that Statute.	p. 90. 91.
That Abettors and Intruders are not.	p. 90.
That	

Precedents in Ejectment.

That the Feoffee of the Diffeisor is not.

That Bodies Corporate and Politick are not. p. 90.

Where there is Tenant for Life, the Reversion in Fee, and Tenant for Life be diffeised, and dye, and the Diffeisor dies within five Years, whether the Reversioner is within that Statute, or whether his Entry is taken away. p. 91.

That an Accord, or Antient Demesne is a good Plea in Abatement. p. 91. ibid.

Of the Verdict, and Judgment.

That the Verdict being the ground of the Judgment, it ought not to be entered for more Land, or different Parcels, than the Defendant was found guilty of by the Verdict. p. 92.

See where a Variance in that particular by the Misprision of a Clerk, hath been amended. p. 92.

See the Statute of the 8th of H. VI. cap. 12, which gave the Judges Power in Affirmances of their Judgment, to amend Mistakes of the Clerks.

Of the Judgment in Ejectment. p. 92. p. 93.

How the Judgment must be where the Verdict is for part. p. 94. 94.
B b 3. Of

A T A B L E to the

*Of the Statute taking away a Capi-
tur pro fine.* p. 95.

*Of the Judgment against Husband and
Wife.* ibid.

*How the Entry must be where there are
three Defendants in a Declaration
of several Parcels, and one is ac-
quitted of all, and the other two of
Part, and found guilty of the Re-
sidue.* ibid.

*What is Error, where the Defendant is
acquitted of Part.* p. 96.

*That by a Determination of the House
of Lords, a Capiatur pro fine is not
to be entered in Ejectments.* p. 97.

*Where there are several Defendants, or
Plaintiffs, and one dies, how the
Judgment is to be entered, and taken.*
p. 97, 98, 99, 100, 101.

Of the Writ of Execution. p. 102.

What Statute gave the Scire facias. p. 103.

*That it was doubted whether a Scire
facias lay to revive a Judgment in
Ejectment, and how settled.* p. 104,
105.

*Why the Plaintiff was put to a Scire
facias.* p. 105.

*When the Plaintiff must move for a Scire
facias to have Execution, and why.*
p. 106.

*When the Defendant in Error may pro-
ceed to Execution without a Scire fa-
cias,*

Precedents in Ejectment.

cias, and where not. p. 106, 107.
How the Writ is to be executed. p. 108.
That the Sheriff may answer breaking open the Door, if he be denied Entrance. p. 108.
How the Possession may be delivered, where several Persons are in Possession of the Premises. ibid.
Where the Plaintiff shall have a new Habere facias, &c. p. 109.
How the Sheriff is to give Execution, where more Land is demanded than recovered. p. 109, 110.
How the Plaintiff is to be quieted, and what Relief he has when his Possession is disturbed after an Execution is executed. p. 110, 111, 112, 113, 114.

Of a Quare ejicit infra Terminum.

Where it lieth, what is recovered by it, and what is the Process. p. 115.
Who may have it, and who not. p. 115, 116, 117, 118, 119, 120, 121, 122.
The Form of the Writ. p. 117, 118.
What Remedy was given by the Statute of Gloucester, Cap. 11, and what by the 21st, of H. VIII. Cap. 15. p. 119, 120.
Against whom it lies. p. 120, 121, 122, 123, 124.

AT A B L E to the

Declarations.

A Lease in Ejectment where the Premises are not inhabited in order to recover Possession. p. 125.

A Declaration in Ejectment by Bill. p. 126, 127.

A Declaration in Ejectment by Original, 128, 129.

The Notice. p. 130.

The Common Rule in Ejectment in the King's Bench. p. 131.

The Rule in the Common Pleas. p. 132.

A Declaration for the Mesne Profits in an Ejectment, tried Mich. 11 K. W. p. 133, 134, 135.

Special Pleas.

A Plea in Abatement that there is no such Writ in the Register. p. 135, 136.

A Plea of the Common Bar, because the Plaintiff doth not name the Closes. p. 137, 138.

The Defendant justifies in Ejectment by virtue of a Demise made to him by the Lessor of the Plaintiff. p. 138, 139, 140.

Replication traversing the Lease. p. 140.

To part not Guilty, to the Residue that R. C. the Brother of the Lessor demised the Tenements with the Appurtenances. 141.

Precedents in Ejectment

tenances. p. 142. — that C. was seized in Fee, and demised to the Defendant. ibid. — that Plaintiff entered and was possessed. — ibid. that C. died without Issue. ibid. — that the Reversion descended to the Lessor of the Plaintiff. 143. — who entered and demised to the Plaintiff. 144. — that the Plaintiff entered, and was possessed. ibid. — upon whose Possession the Defendants entered, and ejected him. ibid.

Not guilty as to the Force and Arms. 148. — Bar to the Residue that W. G. was seized in Fee. ibid. — that he made his Will, and demised the Lands to J. the Wife of R. L. for life. 149. — Remainder to R. L. and J. L. his Sons for twenty one Years. with Remainders over. ibid. that R. L. and J. entered. ibid. — that R. L. died, and that J. was sole seized by Survivorship. 150. — that E. G. died without Issue. ibid. — that M. G. devised to the Lessor of the Plaintiff on Condition. 151. — that M. G. died without Issue. 152. — that J. L. died seized. ibid. — that R. and J. his Sons entered by the first Devise for 21 Years. ibid. — that they died Intestate. ibid. that R. E. administered, and possessed himself of the Residue of the Term. 153. — that the Condition was broken by

A T A B L E to the

by the Non-payment of the 40 Shillings
a Year, to E. Wife of H. S. *ibid.*
that after the Expiration of the Term
of 21 Years, the Messuage in Questi-
on descended to the said E. and to
one H. J. as Cousins, and Heirs of
the said M. G. *ibid.* — that the Lef-
sors of the Plaintiff entered, and de-
mised to the Plaintiff. 154. — who
entered, and was possessed. 155. — up-
on whose Possession H. S. entered for
the Condition broken, and were seised
in Fee, whereby the Defendant as
Servant to them, and by their Com-
mand entered and ejected the Plain-
tiff. *ibid.* — Replication by the Plain-
tiff that E. the Wife of H. S. is not
the Person intended by the Will of the
said M. G. for Plea, that the said
M. being seised in Fee, devised to the
Lessor of the Plaintiff in Fee. 156.
who entered and demised to the Plain-
tiff for 7 Years. *ibid.* — who entered
and was possessed. 157. — untill the
Defendant ejected him. *ibid.* — and
traverses the Devise to the Lessor of
the Plaintiff, upon Condition as in
the Bar. *ibid.* — a Demurrer thereto.
158. — a Joinder in Demurrer. *ibid.*

*A Plea in Bar to a Declaration in Eject-
ment, setting forth the Lease to be
made by Mary Paston, Widow to the
Plaintiff, on the seventh Day of De-
cember,*

Precedents in Ejectionment.

ember, in the twentieth Year of the Reign of King James the First, and the *Trespass* to be committed on the eleventh of *March* following. 159.

To Part, the Defendant pleads the General Issue. 159. — *to the Residue, the Defendant pleads in Bar, that E. P. seised of the Manor of B. in Fee of which the Premises being Customary Lands, are Parcel.* 160. — *that he enfeoffed T. P. his Son in Fee, and M. his Wife, for Life.* 161. — *who granted to the Defendant Barnard, the Premises by Copy of Court Roll in Fee.* ibid. — *that T. P. died, and M. became Tenant for Life.* 162. — *who entered into the Premises upon the Possession of the Defendant.* 162. — *and demised to the Plaintiff.* 163. — *who entered, and was possessed.* ibid. — *untill the Defendants entered and ejected him, claiming the Estate of one of the Defendants.* ibid.

Replication, confessing that E. P. was seised of the Manor of B. whereof, &c. in Fee. 164. — *and that the Premises were Customary Lands.* ibid. — *and that T. P. entered, and disseised his Father.* 165. — *and granted by Copy to the Defendant B. in Fee.* ibid. — *who entered, and was seised.* ibid. — *and that E. P. the Father re-entered.* 166. — *and enfeoffed T. P. in Fee, and*

A T A B L E to the

and M. his Wife for Life. ibid. — that T. died, and M. survived him. 167. — and that M. became seized for Life, by Survivorship. 167. — that the Defendant entered, and was possessed until M. re-entered upon his Possession, and expelled him. ibid. — and afterwards demised the Premises to the Plaintiff. ibid. — who entered and was possessed. 168. — and the Defendant entered and ejected them. ibid. — and traverses the Feoffment set forth in the Bar. ibid.

A Plea as to part not Guilty. 169. — as to the Residue, the Defendant pleads that Queen Elizabeth was seized in Fee, in Right of her Crown. ibid. 170. — and by her Letters Patents demised to T. Matthew for twenty one Years. ibid. — that the Queen died seized of the Reversion. 171. — that it descended to King James I. ibid. — that King James by his Letters Patents, demised the Premises for forty Years after the Expiration of the former Lease. 171, 172. — that the Demise to Matthews expired. 173. — that Bambridge entered and was possessed. ibid. — and demised to the Defendants. ibid. — that the Lessor entered upon the Defendants, and expelled them. 174. — and demised to the Plaintiff. ibid. — that the Plaintiff

Precedents in Ejectment.

tiff entered, and was possessed till the Defendant entered, and ejected him, as it was Lawful for him to do it. ibid.

Replication the Plaintiff confesseth the Seisin of the Queen. 175. — and that She demised to Matthews. ibid. — that he entered, and was possessed. 176. and also confesses the Demise of the Crown, and the descent to King James. ibid. — but that King James by his Letters Patents, bargained and sold the Reversion to Edward Ferrers, and Francis Philips. 177. — who by Indenture, bargained, and sold to Robert Marsh, and Philip Dorrell. ibid. — that Robert Marsh, and Philip Dorrell by Indenture, enrolled, bargained, and sold the Reversion to M. H. and A. W. 178. — that they the said R. H. and A. W. by their Indenture enrolled, bargained, and sold the Reversion to the Lessor of the Plaintiff. 179. — that Henry and Ambrose by Indenture inrolled, bargained, and sold to George Crosland. 180. — that the Demise to Matthews expired. 181. — that the Lessor of the Plaintiff entered, and was seized. ibid. — and demised to the Plaintiff. ibid. — who entered, and was possessed untill the Defendants entered, and ejected him. 182. — the Case.

Special

A T A B L E to the

Special Verdicts.

Not Guilty, pleaded. 184. — *the Postea.*
185. — *Special Verdict.* 186. — *a Seisin in Fee by J. H. ibid. — a Devise from him to his Son Henry for Life.* 186. — *remainder to the first Issue Male of Henry, then to the Heirs of the Body of such Issue Male, &c.*
187. — *that the Testator died seised.*
188. — *after whose Death, it descended to Henry, who entered, and was seised.* 189. *and he demised for a Term.* ibid. — *and afterwards be released the Premises to Short, and Norris.* 190. — *to hold to them, and their Assigns, to the use of Judith Stronghill.* ibid. — *and for cutting off the Estates Tail, Short and Stronghill covenant, that a Preceipe shall be brought against them.* 191. — *and that they shall vouch Henry, who shall vouch the Common Vouchee.* 192. — *the Uses.* ibid. — *that Judith entered.* ibid. — *and then the Jury find the Recovery wherein Henry vouched.* 193. *who vouches over the Common Vouchee.*
195. — *the Judgment upon the Recovery.* 196. — *the award of the Writ of Seisin.* ibid. — *the Return.* ibid. — *that Henry had Issue the Plaintiff's Lessor.* 197. — *that Judith died seised.* ibid.

Precedents in Ejectment.

ibid. — that Henry entered, and bargained, and sold the Premises to Sympson. ibid. — and the next Day releases to him in Fee. 198. — a Covenant to suffer a Recovery thereupon. 199, 200. 201. — the Uses. 201. — that a Writ of Entry was sued out, and a Recovery had thereupon. 201. — wherein Henry Stronghill was vouched, 202. — who vouched the Common Vouchee. 203. — the Vouchers Plea. ibid. — Imparlace. 204. — Judgment on the Recovery. ibid. — a Writ of Seisin. ibid. — the Return. 205. — that Sympson entered, and was seised, and died seised, and the Premises descended to his Son and Heir, who entered, and was seised. ibid. — and by his Indenture of Bargain, and Sale granted to Henry Oxenden, &c. ibid. — that Henry Stronghill and Sympson, released to George and Richard Oxenden. 207. — wherein was a Covenant for further assurance. 208. — whether by Fine, or otherwise. 209. — that George and Richard Oxenden entered 211. — and a Fine was levied to them by Stronghill and his Wife. ibid. the Uses. 212. — that George and Richard Oxenden entered and were seised. ibid. — that Henry Stronghill died. ibid. — (Richard his first Son being then under Age.) ibid. — that George

A T A B L E to the

George and Richard Oxenden, leased to John Jordan the Premises at Will. 213. — and the Plaintiffs Lessor entered upon them. 213. — and ejected them, and became seized and demised to the Plaintiff. 214. — who entered upon the Defendants. 214. — but whether Defendants are guilty, the Jury leave that to the Judges, and if they determine that they are guilty, then the Jury find them so. 215. — if not, then they find them not guilty. 216. — the Continuances. 216, 217.

Not Guilty. 217. — the award of the Venire. ibid. — the award of Nisi prius. 218. — the Postea. ibid. — a Tale awarded. ibid. — as to two parts of the Manor, and as to two third parts of the Premises, not guilty. 219. — as to the other part, the Special Verdict. ibid. — that the first of December in 38 Eliz. P. Bathurst was seized in Fee. 220. — and that he had Issue his Son and Heir Apparent. 220. — that P. on the seventh of December, 40 Eliz. executed an Indenture between him, of the one part, and the said Edward, and others, of the other part. ibid. — the Indenture set forth by which the said P. for the Preferment of his Son Edward, granted, &c. to Edward; &c. the Premises in the Declaration. 221. — Habendum to them, and their Heirs.

Precedents in Ejectment.

Heirs. 222. — to the Use of himself for Life, the Remainder to such Persons as he shou'd appoint by his last Will, &c. for the Term of seven Years, and for want of such Appointment, immediately after his Decease to the Use of his Executors, &c. for seven Years, for the payment of his Debts, and Legacies, and to perform his Will, ibid. — Remainder to the use of Edward his Son for Life. ibid. 223. — Remainder to his first Son in Tail Male. ibid. Remainder to the second, third, fourth, and fifth Sons. — Remainder to the right Heirs of Paul. 224. — that Paul Bathurst died the sixth of December, 42 Eliz. 224. — that Edward his Son and Heir entered, and was seised. 225. — that he had Issue Thomas his eldest Son, and Edward, William, and Robert. ibid. — that Edward the Father died seised 1 May 1630. ibid. — that Thomas his eldest Son entered, and was seised. 225. — that Mich. Term 7 Car. the said Thomas suffered a Recovery. 226. — wherein Edward Howse was vouched. 227. — the Plea of the Voucbee. ibid. the Imparlane 228. — the Judgment. ibid. — the Writ of Seisin. ibid. — the Return. 229. — that Thomas Bathurst on the twenty fifth of February, 8 Car. I. executed an Indenture between him

A T A B L E to the

of the one part, and Walter Roberts and Henry Crisp of the other part. 229. — the Indenture set forth, in which it is recited, that the said T. B. was seised in Fee. ibid. — Reciting also that a Marriage was intended between him and E. Hooper, that he by the same Indenture, for a Jointure for the said Elizabeth, and for the Advancement of their Issue Male, covenanted, &c. with the Trustees, that he and his Heirs wou'd stand seised of all the Premises to the Use of himself, and the said Elizabeth for their Lives. 231. — Remainder to the first Heir Male of their Bodies. 232. — Remainder to the second Heir Male, and so on to the third, fourth, fifth, and sixth Heirs Male. 233. — Remainder to the Right Heirs of Thomas. ibid. — that the said T. B. and Eliz. married. 234. — that T. B. died without Issue. ibid. that Elizabeth survived, and was seised for her Life 234. — the Reversion Expectant to the Right Heirs of T. B. ibid. — that W. B. his Brother, made his Will. 235. — that the said W. B. died. 236. — that the first of December, 32 Car. II. Elizabeth died. ibid. — that on the tenth of December, 32 Car. II. the Defendant E. B. entered as Heir to the said T. B. ibid. — that the said Manor, and

Precedents in Ejectment.

and Tenements are Antient Demesne, held of the Manor of Aylesford. 237. — that the Defendant being seised, it is recorded amongst the Pleas at Westminster, of Trin. 33 Car. II. in the Common Pleas. ibid. — that the Defendant was attached in a Writ of Distress, to answer to the said Thomas Culpeper Lord of the Manor of Aylesford, to reverse a Common Recovery. 238. — the Declaration on the Writ of Distress. 241. — the Judgment for the Plaintiff in the Writ of Distress. 242. — the Defendant amerced. 243. — it is further found that the said Elizabeth, Relict of the said William Bathurst, entered 1 April, 24 Carr. II. ibid. — and on the seventh, by Indenture leased the Premises to the Lessor of the Plaintiff for five Years. 244. — and that Elizabeth is now alive. ibid. — the Case. 245.

An Ejectment of a Messuage and Lands in Brinton, Birmingham, and Stodey of the Demise of Cicely Cook, and Mary Cook. 246.

A Verdict as to part for the Plaintiff. ibid. — as to another part not guilty, 247. — as to another part a Special Verdict, that one Edmund Cook, the Elder was seised in Fee of Lands that were Copyhold Lands, of the Manor of Thorng. ibid. — that he had three Sons, viz. Robert, Edmund,

A T A B L E to the
and John, and three Daughters, Cicely, Ellen, and Alice, 248. — that on the fifth of October, 1659, be surrendered to the Use of his Will, 248. — the Will of Edmund Cook the elder in hæc Verba, 249. — that the Testator died on the first of August, 1668, 250. — that the said Edmund Cook the Son, was admitted to the Reversion devised to him upon producing the Will at the Court of the Manor, on the eighth of May, 24 Car. II. as by the Copy of the Court Rolls, &c. 251. — that at the same Court the said Edmund the Son, surrendered to the Use of his Will, ibid. — his Will set forth in hæc Verba, 252. — that Edmund the Son died 1 June, 1674. and that the said Sisters on the first of August, 1675, died without Issue, 253. — the first of September, Anne the Mother died, ibid. — that the said John Cook the Brother of Edmund, upon producing his Brothers Will, was admitted, ibid. — as by the Copy of the Court Rolls, &c. 254. — that the said John Cook the sixth of February, 1682. made a Letter of Attorney, &c. to one J. C. a Customary Tenant, &c. to surrender to the Use of John Ladd, and his Heirs, upon Condition to be void upon Payment of 106l. 27th of February, 1683, 225. — that on the fourth Day of March,

Precedents in Ejectment.

March, the Attorney surrendered accordingly, 256. — that John Cook died the twentieth of February, 1 K. James II. without Issue, and Robert Cook died at the same time, 257. — that afterwards on the twelfth of May, 1 King James II. John Ladd came into Court, and was admitted, *ibid.* — as by the Copy of the Court Rolls, 258. — that the Lessors were Cousins and Heirs to the said Edmund Cook the Son, and of John Cook, and of the said Cicely, Ellen, and Alice, and sherewth bow, 258. — the Case, 259.

A Special Verdict that the Tenements in Question are Copyhold, Parcel of the Manor of Newnton, 261. — that William Eastcourt was seised in Fee of the said Manor, and William Weeks was seised of the Copyhold for Life, *ibid.* — that he married Elizabeth Kite, 262. — that William Eastcourt died seised of the Manor, which descended to Amy Eastcourt the Lessor, *ibid.* — that William Weeks permitted the Messuage to be ruinous, and on the twenty fifth of November, 1690, demised the Copyhold, &c. to E. B. for a Year, and so from Year to Year, &c. *ibid.* — that Amy Eastcourt died, and that her Moiety descended to the Lessor of the Plaintiff, 263. — that

A T A B L E to the

William Weeks died seized the first of February, 1696, *ibid.* — that there is a Custom within that Manor, that the Wife of every Customary Tenant, dying seized for Life, should hold the Lands during her Widowhood, and that the Executors of such Tenant, if he died between Christmas and Lady-Day, shall hold 'till next Michaelmas following, *ibid.* — that the Lessor of the Plaintiff entered for the Forfeiture after the Death of William Eastcourt, Anne Eastcourt, and William Weeks, and before the next Michaelmas after the Death of William Weeks, 264. — that the Messuage at the time of the Entry of the Lessor was out of Repair, but is now in good Repair, *ibid.* that the Lessor made the Lease to the Plaintiff on the nineteenth of January, 9 Will. III. and that the Plaintiff was possessed 'till the Defendant as Servant to the said Elizabeth the Wife of the said William Weeks, entered, &c. 265. — and that the said Elizabeth is now alive, and not married after the Death of her Husband, *ibid.* — the Case, 266.

A Spectal Verdict, that the Tenements in Question are Copyhold Lands of the Manor of Swetfling Campsey, 268. — that Henry Warner, and Elizabeth

bis

Precedents in Ejectment.

his Wife, were seised in Right of Elizabeth for her Life, ibid. — Remainder to John Ballet in Fee, 269. — that within the Manor, there is a Custom, that if any Surrender be presented at the next Court, that the first Proclamation shall be, that the Person who hath a Right, shall come and pray to be admitted, &c. 269. — and if he will not, &c. then a Second, and so a third, 270. — and if he will not come upon the third Proclamation, then the Steward of the Court is to command the Bailiff to seize the Premises to the Use of the Lord, 270. — that the said Henry Warner, and Elizabeth, and John Ballot the sixth of April, An. 34 Car. II. surrendered out of Court into the Hands of the Lessor of the Plaintiff, she being the Lady of the Manor, 272. — to the use of Robert Freeman, and his Heirs, ibid. — that Robert Freeman died before any Court, and John Freeman was his Son and Heir, and within Age, 272. — that the Surrender was presented at the next Court the eighth of September, 34 Car. II. ibid. — that the first Proclamation was made at that same Court, 273. — and that no Person came, &c. ibid. — the like at the second Court, ibid. — the like at the third Court, ibid.

C c 4 — whereupon

A T A B L E to the

— whereupon the Premises were seised by the Bailiffs for the use of the Lessor of the Plaintiff, 274 — and that She entered for the Forfeiture, 275. — the Case, *ibid.*

A Special Verdict, that Thomas Andrews was seised in Fee, fourteenth of February, 14 James I. and by Indenture conveyed the Premises to the Use of himself, and Eleanor his Wife for Life, Remainder to Mary Andrews his Daughter, and the Heirs of her Body, begotten by one John Gwillym the younger. — Remainder to the said Mary Andrews the Daughter in general Tail, 276, 277. — Remainder to Elizabeth Tompkins another Daughter in general Tail. — Remainder to William Tompkins the eldest Son of the said Elizabeth in general Tail, 277. — Remainder to John Tompkins another Son of the said Elizabeth in general Tail, — Remainder to the Right Heirs of Thomas Andrews, 278. — that J. Gwillym the younger married the said M. A. and had Issue T. G. That afterwards and before 29 May, 1646. the said T. A. and his Wife died, *ibid.* — and the said J. G. and M. his Wife entered, 279. — that afterwards, and before the said 29th of May, J. G. and his

Precedents in Ejectment.

bis Wife died, whereby the said T. G. their eldest Son entered, and had Issue T. who entered, &c. 279. — that the Tenements are held of the Manor of Wormlow, which is Antient Demesne, ibid. — and pleadable by a Writ of Right Close, before the Steward, &c. of the Manor, 280. — that Fines are levied in that Court, 280. that twenty ninth of May, 1646. a Fine Sur Concessit was levied of the Premises by Thomas Gwillym the Father, and his Wife, according to the Custom, &c. 280. — whereby T. G. the Father granted to W. N. and S. and J. N. their Son for their Lives, &c. 281. — reserving an Annual Rent of Six Pounds, 282. — the Fine in hæc Verba. ibid. — that the Premises at the time of the Fine, were not usually demisable, nor was the Rent reserved, the antient Rent, that the Conuzees entered, 384. — that T. G. the Father, being seised of the Reversion, be, and his Wife levied another Fine of the Premises, 2 Jan. 24 Car. II. to T. Marret and his Heirs, ibid. — the Fine in hæc Verba, 286. — that the last Fine was levied to the use of T. G. the Father, that T. G. the Father 1 Nov. 24 Car. I. by an Indenture enrolled, &c. conveyed, &c. the Premises to Thomas Payne, and his Heirs,

A T A B L E to the

288. — *the inrollment of the Indenture before the Justices of Peace, 289.* — *that Thomas Gwillym the Father, nineteenth of November, 1649. released all his Right to the said Thomas Payne, being seized, &c. and to his Heirs, 290.* — *the Release in hac Verba, ibid.* — *that Thomas Gwillym the Father died the twentieth of January, 1663. 292.* — *that the said T. G. the younger within Age, was his Son and Heir, and had Issue the Lessor of the Plaintiff, 293.* — *that the Lessor, &c. was also Heir of the Body of the said Mary Andrews, 293.* — *that the said T. Payne died the twentieth of September, 1661. and his Reversion descended to John Payne his Son and heir, ibid.* — *that on the twenty eighth of December, 1680, John died without Issue, and the Reversion descended to the Defendant's Wife, as Co-heir of the said John, 294.* — *that Thomas Payne and his Heirs, received the Annual Rent, &c. ibid.* — *that the Survivor of the three Lessees died the seventeenth of September, 1693. 295.* — *that thereupon the Defendants entered, and the Lessor being within Age, entered upon them, &c. ibid.* — *the general Conclusion, of the Special Verdict, ibid. the Case, ibid.*

Judgments

Precedents in Ejectment.

Judgments and other Entries.

Judgment in *Ejectment for the Plaintiff after a Verdict.* p. 298.

Judgment by *Default, on a Scire facias in Ejectment on a double Demise.* ibid.

Judgment in *Ejectment by Default, by Nil dicit upon an Original.* p. 299.

Judgment in *Ejectment by Original, where the Attorney says he is not instructed to make any Defence, which is properly called, Non sum informatus.* p. 300.

The Difference between an Inquisition on an Original, and when the Proceedings are by Bill. p. 301.

A Judgment by *Non sum informatus, with a Remittitur Damna.* p. 302.

Judgment for the *Plaintiff for Part, and the Plaintiff to be amerced for the Residue.* p. 303.

When the Defendant relinquisheth his Plea, and confesseth the Action, and a Writ of Inquiry is awarded for the Plaintiff. p. 304.

Judgment that the *Plaintiff recover the Lands, who remitteth the Damages, and prayeth Judgment for the Costs with increase; and as to the Residue of the Lands whereof the Defendants are found not guilty, the Plaintiff is amerced.* p. 305.

 Judgment

A T A B L E to the	
Judgment for the Plaintiff where the Term expired before the Judgment given.	p. 307.
One of the Defendants found not guilty as to part, and the others not guilty as to all.	ibid.
Judgment for the Plaintiff after a Verdict at Bar, and a Writ of Possession awarded, and the Return thereof.	p. 308.
A Verdict against several Defendants for several Parcels of Land, and several Damages found, and Costs against all.	p. 310.
Executions and Returns thereof.	
A Writ of Habere facias Possessionem, or a Writ to cause the Plaintiff to have his Possession of the Tenements in Question with a fieri facias for the Costs.	p. 312.
Continuances upon an Habere facias Possessionem.	p. 314.
A Tarde returned upon the Writ of Possession, and the Writ of Inquiry executed, and another Writ of Possession awarded.	p. 315.
As to the Writ of Possession, the Sheriff returned that nothing was done thereupon, and as to the Writ of Inquiry for Damages, that the same was executed, and another Writ of Possession awarded.	p. 317.
The	

Precedents in Ejectment.

The Sheriff returneth that he bath delivered Possession, and an Inquisition for the Damages, and the Court will advise before they pronounce Judgment for the Damages. p. 318.

The Sheriff returneth that Possession was delivered by his Predecessor, and a Tarde as to the Writ of Inquiry.

p. 319.

Proceedings in Error in Actions of Ejectment.

An Assignment of Errors in the King's Bench, on a Judgment in Ejectment in the Common Pleas. p. 325.

The Entry of an Assignment of Errors in the Exchequer Chamber, and of the Judgment thereon, as also of the Remission of the Record back again into the Court of King's Bench. p. 327.

A Writ of Error upon a Bill of Exceptions, upon a Verdict and Judgment in the Common Pleas in Ireland removed into the King's Bench there, and affirmed, and from thence removed to the Court of King's Bench in England, and there affirmed, and afterwards removed into the House of Lords. p. 330.

The Writ of Error. ibid.

The Return thereof. ibid.

The Placita of the Record in Error.

p. 332.
The

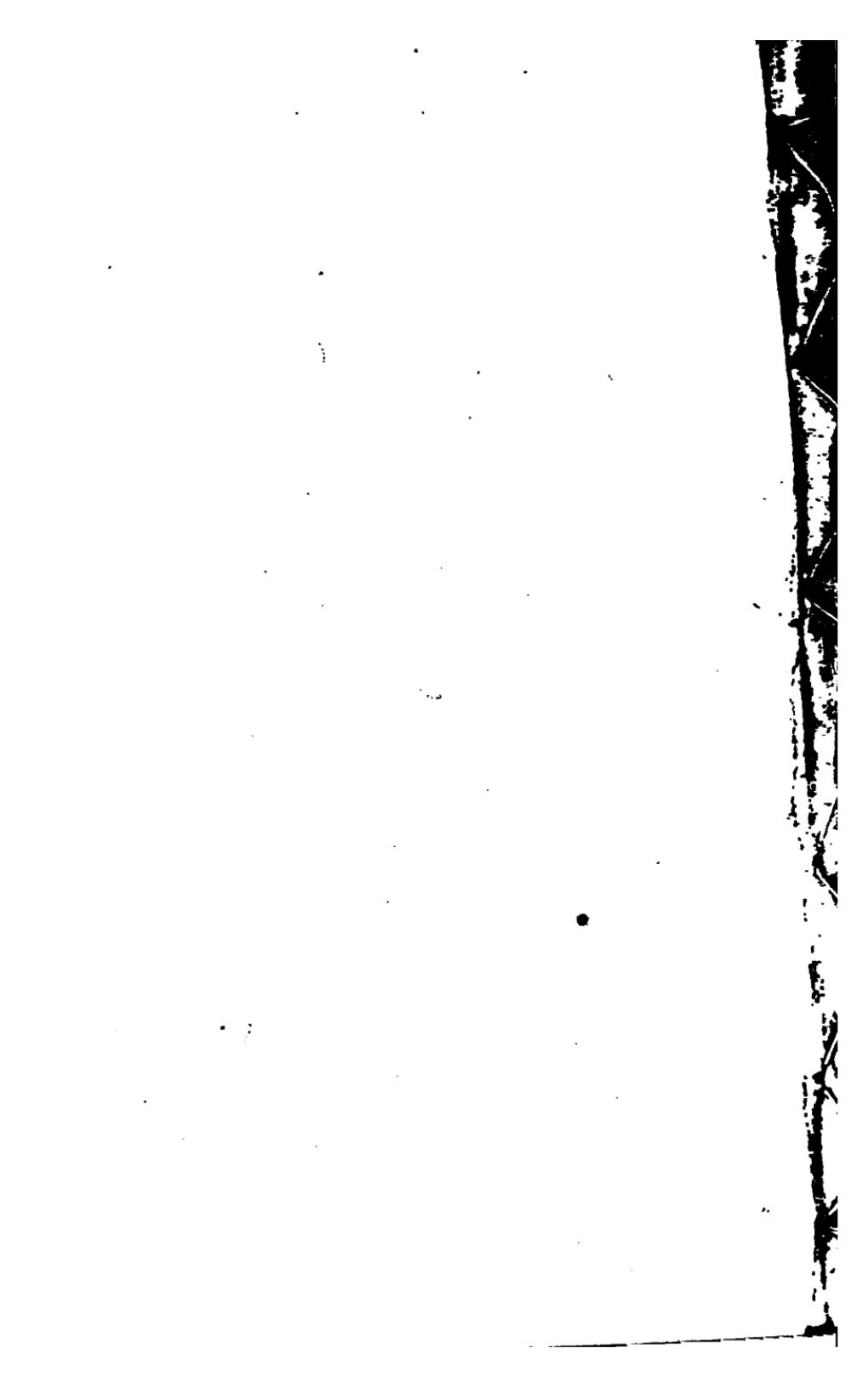
A T A B L E to the

<i>The Writ of Error to impower the Chief Justice of Ireland to examine the Record and Proceedings there.</i>	p. 332.
<i>The Return thereof.</i>	p. 334.
<i>The Placita of the Record of the Common Pleas in Ireland.</i>	ibid.
<i>The Declaration in Ejectment.</i>	334. — not guilty, pleaded, 337. — the Jurata at Bar, ibid. — the demise of the Queen, a full Jury appear, — a Verdict for the Plaintiff, — the Judgment, — a scire facias awarded Quare Executio non, — the Plaintiff offers himself on the fourth Day of the Plea, — the Sheriff returns a Nihil, — an alias Scire facias awarded, 340. — a Bill of Exceptions produced, ibid. — the Bill of Exceptions, with a Recital of the Record, 341. — Evidence given for the Plaintiff, 342. — an Act of Parliament made 8 May, 13 Car. II. ibid. — the Death of Jenico Preston without Issue Male, 343. — Averment of Identity, ibid. — the Lease, Entry, and Ouster, ibid. — the Defendants Counsel give their Evidence, 343. — the explanation Act, 344. — that the Lord Viscount Gormanstown was attainted of High Treason, 346. — a Ne amoveas Manus. ibid. — that the Plaintiff's Counsel gave that for Evidence which was not so, 347. — the Judges are desired to inform the Ju- ry

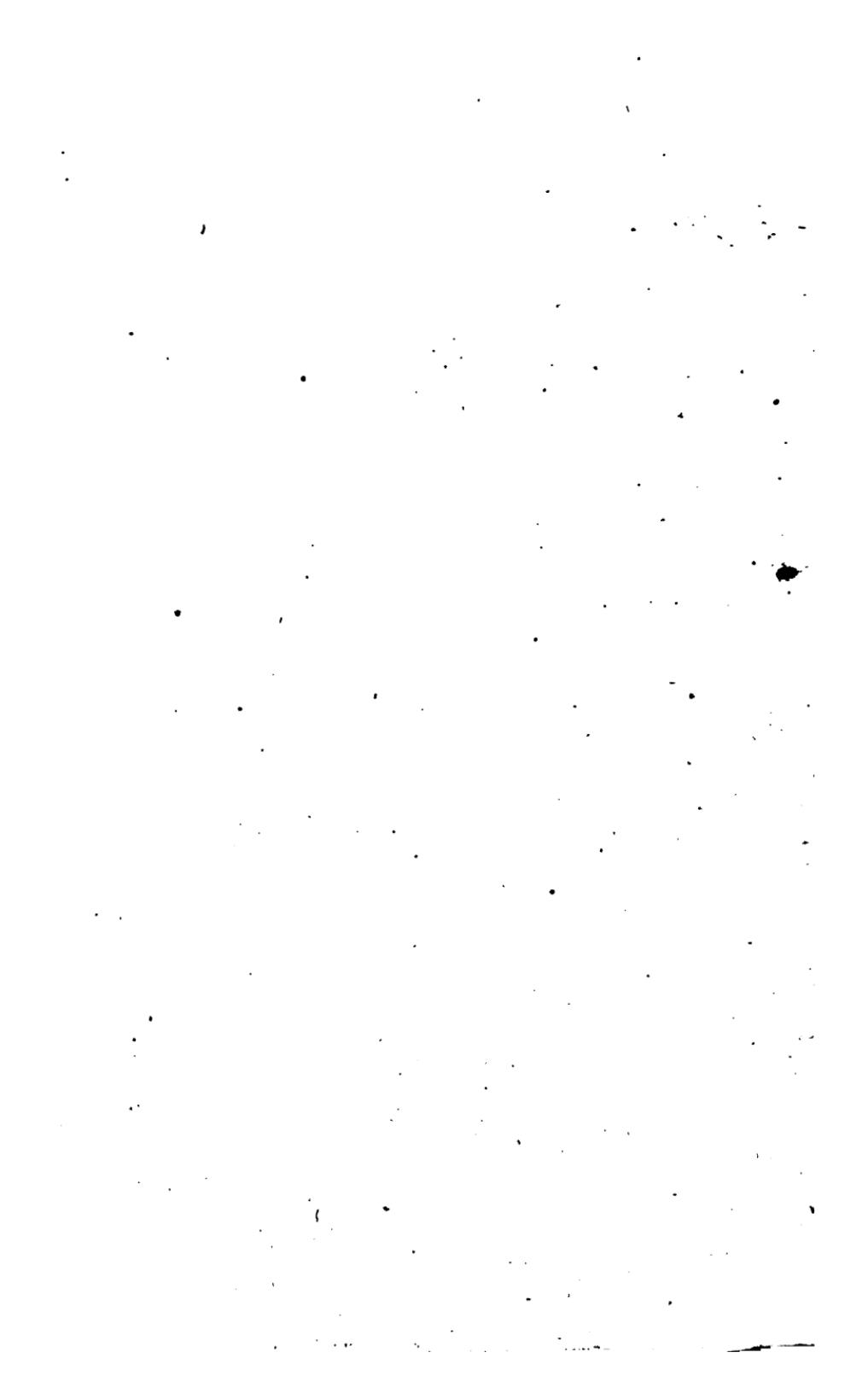
Precedents in Ejectment.

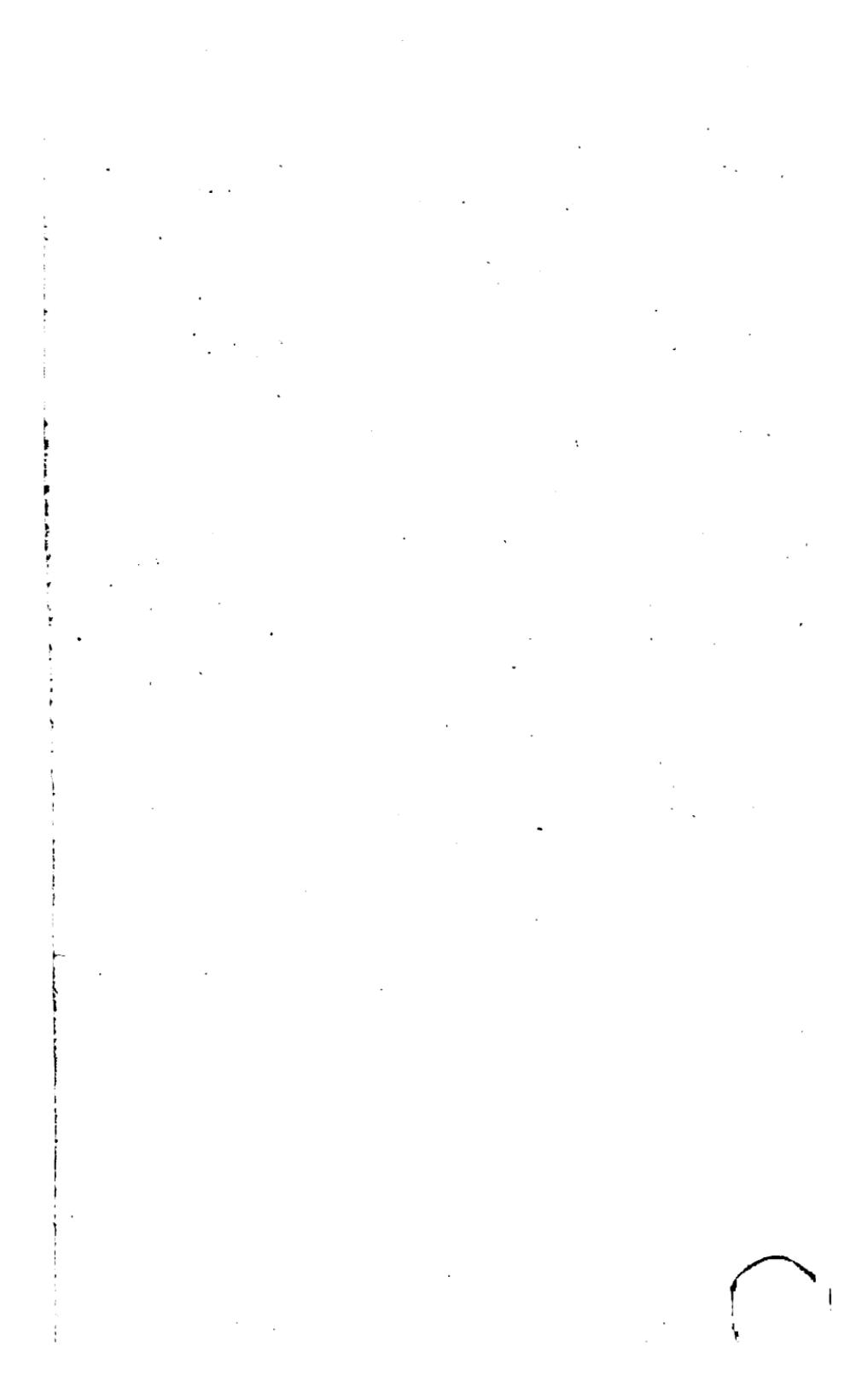
ry of the Law, ibid. — but they affirmed that to be Law, which the Defendants Counsel apprehended to be not Law, ibid. — wherefore the Defendants Counsel prayeth the Judges to seal a Bill of Exceptions, 348. — which they did, ibid. — a Scire facias awarded to the Justices to deny, or acknowledge their Seals, 349. — the Justices appear, and acknowledge their Seals — another Writ of Error to the Court of King's Bench in Ireland, 349. — the Plaintiff in Error assigns Error, 351. — the Defendant in Error pleads in nullo est Erratum, 352. — The Judgment of the Court that the Judgment be affirmed — Errors assign'd in England — In nullo est Erratum. — The Writ of Error in Parliament. — The Return by the Chief Justice. — The Placita in the King's Bench — The Judgment thereon — The Assignment of Errors in Parliament — In nullo est Erratum.

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